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1 VOLUME 14 - OCTOBER 3, 2002

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3 STATE OF MINNESOTA

4 OFFICE OF ADMINISTRATIVE HEARINGS

5

6 PUC DOCKET NO: P-421/CI-01-1371

7 OAH DOCKET NO: 7-2500-14486-2

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10 In the Matter of a Commission Investigation into
11 Qwest's Compliance with Section 271(c)(2)(B) of
12 the Telecommunications Act of 1996; Checklist
13 Items 1, 2, 4, 5, 6, 11, 13 and 14

12

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14 Minnesota Public Utilities Commission
15 350 Metro Square Building
16 121 Seventh Place East
17 St. Paul, Minnesota

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19 Met, pursuant to notice, at 9:00 in the
20 morning on October 3, 2002.

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23 BEFORE: Judge Richard C. Luis

24 REPORTER: Gail M. Hinrichs, RPR

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1 APPEARANCES:

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13 Department of Commerce.

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1 REBECCA DeCOOK, STEVEN WEIGLER, LETTY
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4 and MARK WITCHER, Attorney at Law, 919 Congress Avenue,
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11 COMMISSION STAFF:
12 Diane Wells and Ray Smith

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21 Whereupon, the following proceedings were duly
22 had and entered of record, to wit:

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1 (Whereupon QWEST Exhibit 163 was marked for
2 identification by the court reporter.)

3 JUDGE LUIS: We'll go on the record and this
4 is the continuation of the matter of Qwest's application
5 for long distance in Minnesota, 1371 portion, the OSS
6 checklist items.

7 Yesterday we started with, at the close of
8 the day, a witness for the Department of Commerce, Terry
9 Murray, and we began into the cross-examination of
10 Ms. Murray by Mr. Steese on behalf of Qwest.

11 Preliminarily, I note that I've been presented with a map
12 of Minnesota and some surrounding areas, which indicates
13 the metropolitan statistical area boundaries in Minnesota,
14 and that's been marked as Qwest 163. That was actually
15 something that was brought up pursuant to questioning by
16 myself.

17 In any event, the map indicates that the

18 MSAs, as they are known, that involve -- thank you, areas
19 in Minnesota are the Duluth/Superior area, the Grand Forks
20 area, Fargo/Moorhead area, which include counties in
21 Minnesota and bordering states, Wisconsin for the first
22 one and North Dakota for the other two. And then two
23 others involving Wisconsin, La Crosse, which includes
24 Houston County, Minnesota into it, and then the
25 Minneapolis/Saint Paul which includes the two semi or
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1 exurban counties in Wisconsin, St. Croix and Pierce, as
2 well as the metro area of Minneapolis/Saint Paul which
3 extends up into and borders on the other one, which is
4 St. Cloud, Stearns and Benton Counties, and then there's
5 also Rochester, Ohmstead County.

6 So on my own motion, I propose Qwest
7 Exhibit 163, which has been marked, be admitted into the
8 record. And there being no objections, Qwest Exhibit 163
9 is admitted. Thank you very much for supplying that.

10 Our court reporter today is Gail Hinrichs and
11 we're ready to proceed. If there isn't anything
12 preliminary, we'll continue with Mr. Steese's cross of
13 Ms. Murray.

14 MR. WITCHER: Your Honor, one preliminary
15 thing. We had committed to providing Exhibits 143 and 144
16 which were a couple of exceptions that were talked about
17 in the cross-examination I did. They arrived last night
18 but don't have everything we agreed would go in there so
19 we're going to have to get some more pages. It will not
20 be today. Hopefully it will be tomorrow or early next
21 week.

22 JUDGE LUIS: All right. Thank you for that
23 notation, Mr. Witcher, and good luck with that task.

24 MR. CATTANACH: Your Honor --

25 JUDGE LUIS: Yes, Mr. Cattanach.

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1 MR. CATTANACH: Yes, a scheduling matter.

2 JUDGE LUIS: Yes, go ahead.

3 MR. CATTANACH: We've been, as Your Honor
4 knows, working from and among the parties trying to fit
5 people into the slots that are available. Here is the rub
6 we've discovered. Mr. McIntyre is available -- is not
7 available after this week and because of other scheduling
8 issues, we have to finish the performance witnesses this
9 week. My sense is that we will finish the performance

10 witnesses today. Maybe even possibly early. Don't know
11 about that. But the -- Ms. Friesen has represented to me
12 that she believes it will be difficult for her to finish
13 her cross-examination of Mr. McIntyre in half a day, and I
14 have asked her whether she would consider starting early
15 on Friday, which would give us a little bit more time, and
16 she's agreed to do that.

17 And so my question to Your Honor is, and to
18 the rest of the assembled counsel and witnesses, I guess,
19 is would it be possible to start with Mr. McIntyre,
20 assuming we're otherwise done here, at 8:00 o'clock
21 tomorrow morning?

22 JUDGE LUIS: All right. I can find out. Can
23 everybody be here that early? All right, we'll try to
24 make that adjustment. All right. That's understood then
25 we'll start at 8:00 on Friday morning.

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1 MR. CATTANACH: Thank you, Your Honor.

2 JUDGE LUIS: Tomorrow the 4th. Remind me of
3 that at the end of the day. I appreciate that.

4 All right, Mr. Steese, you may resume.

5 TERRY MURRAY,

6 after having been previously sworn, was
7 examined and testified on her oath as follows:

8 CROSS-EXAMINATION (continued)

9 BY MR. STEESE:

10 Q Hi, Ms. Murray. Good morning.

11 A Good morning, Mr. Steese.

12 Q We had a very brief conversation yesterday and I thought
13 I'd just follow-up on a few points that we had after you
14 were off the stand.

15 A Sure.

16 Q I understand that when you performed the reconciliation,
17 for lack of a better term, found in your direct testimony,
18 which is Exhibit Number 154, 155?

19 A Yes.

20 Q That at that point in time, you did not have the AT&T pink
21 sheets yet; is that correct?

22 A That is correct. We received those in August.

23 Q And so the direct testimony that you have the discussion
24 on reconciliation is basically looking at summary data
25 from AT&T and comparing that to ad hoc data from Qwest; is

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1 that correct?

2 A That is correct. Summary data at both levels.

3 Q Are you aware that Qwest provides CLEC-specific
4 performance data reports?

5 A Yes, generally I'm aware of that.

6 (Whereupon QWEST Exhibit 164 was marked for
7 identification by the court reporter.)

8 JUDGE LUIS: All right. This just
9 distributed is Qwest performance results pertaining to
10 AT&T Minnesota, September 2001 to August 2002. It's been
11 issued September 19, 2002 and it's been marked as Qwest
12 Exhibit 164.

13 BY MR. STEESE:

14 Q Ms. Murray, you have marked in front of you an
15 AT&T-specific performance report for the state of
16 Minnesota. Have you ever seen this particular document
17 before for AT&T?

18 A I have seen performance results, obviously I haven't seen
19 this one which goes through August 2002 and was produced
20 in September of 2002, on September 19. I have seen
21 similar documents, but not this one.

22 Q In part of your preparation here, creation of your
23 testimony, did you request CLEC-specific performance
24 reports such as this? Obviously not through August since
25 that's too late, but such as this for you to evaluate?

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1 A I did not personally request that. I believe that
2 Ms. Kientzle, who was working with me on the PID review,
3 did herself look at CLEC-specific results that are in the
4 PID data. I don't recall whether she requested this
5 specific format as opposed to just looking at the
6 CLEC-specific data in the PIDs.

7 JUDGE LUIS: Could I have a spelling on the
8 name Kientzle?

9 THE WITNESS: K-i-e-n-t-z-l-e.

10 JUDGE LUIS: Thank you.

11 BY MR. STEESE:

12 Q You say the CLEC-specific data in the PIDs. What format
13 would you have other than this?

14 A Well, the underlying data in the databases that the
15 Department has requested includes data for individual
16 CLECs. And so Ms. Kientzle, for example, could generate a
17 report in the process of working with those data that
18 wouldn't be in this format necessarily, but would be
19 generated from some of those underlying files.

20 Q And had you done that, those would have been included in
21 your work papers, correct?

22 A To the extent that we relied on that, that should have
23 been included in the work papers or -- well, let me be
24 careful to say. Unless it was relied on specifically as
25 work paper, it wouldn't have been included because the
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1 data themselves, of course, are in Qwest's PID data and
2 underlying databases which were provided to us by Qwest.
3 So we didn't just provide back to you your own data.

4 Q I definitely understand that. But the CLEC-specific
5 reports themselves, like you see in front of you -- and I
6 realize this is just one representative example and there
7 would potentially be a number of CLECs that you would be
8 interested in -- but these specific types of reports were
9 not requested from Qwest or the individual CLECs?

10 A Not these specific reports, no.

11 MR. STEESE: Qwest moves the admission of
12 Exhibit 164.

13 JUDGE LUIS: Any objections?

14 MS. ZELLER: Your Honor, I would just note
15 that, again, this is the August data which we're not
16 normally including in the scope of this proceeding.

17 MR. STEESE: We certainly will not rely in
18 any way, shape, or form in our briefs on any August line.
19 We apologize for that.

20 JUDGE LUIS: Very well. With that
21 understanding, Qwest Exhibit 164 is admitted to the
22 record.

23 BY MR. STEESE:

24 Q Just one other very small area of inquiry. Your
25 supplemental surrepley, which is Exhibit, I believe, 162,

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1 dated September 10 --

2 A I think 162 is a corrected exhibit.

3 Q You are correct, I apologize. It is number 160.

4 A Correct.

5 Q Page 30, paragraph 67.

6 A Yes.

7 Q You make specific questions or raise specific issues with
8 respect to OP-6 and that there were instances -- and let
9 me ask a few foundational questions so that the Court can
10 track with us. OP-6 is the number of days an order is
11 delayed past the due date, correct?

12 A Correct.

13 Q And OP-6 is broken out into two different categorizations,
14 delays not for facility reasons and delays for facility
15 reasons, correct?

16 A That's my recollection.

17 Q And in the PID data for a period of time, there were
18 instances where a delay could show -- where an order was
19 delayed purely CLEC fault and so there would be a zero day
20 delay attributable to Qwest included, correct?

21 A Correct.

22 Q Qwest has since corrected that issue; isn't that true?

23 A Yes. As I say in paragraph 67, the PID has subsequently
24 been modified to exclude such instances and Qwest has
25 rerun the results through December 2001.

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1 Q If you were to look at Exhibit 139, which is from before,
2 the notes version of the PID.

3 A Just a moment.

4 Q This was when Mr. Williams was on the stand.

5 A Yes.

6 Q Page 24, about two-thirds of the way down the page where
7 you see OP-6A?

8 A Yes.

9 Q The very last instance where you see OP-6A, in fact.

10 A Yes.

11 Q That particular description which shows a correction in
12 May retroactive to December of 2001 is the exact issue
13 we're talking about, correct?

14 A Yes.

15 Q In your testimony Exhibit 160, you say that the Liberty
16 data reconciliation and audit never uncovered this issue,
17 correct?

18 A Just a minute. I inadvertently closed that. Yes.

19 Q You're aware that this particular issue, this zero day
20 delay, whatever you like to call it issue, is unique to
21 PID version 4.0, correct?

22 A I don't recall off the top of my head if it was unique to
23 that PID version. I do recall it was involved in that PID
24 version.

25 Q Well, PID version 3.0 was based on original due date, and

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1 delays for CLEC reasons were not counted at all in PID
2 version 3.0; isn't that correct?

3 A I'll take that subject to check. I don't specifically

4 recall at this moment the differences from 3.0 to 4.0.

5 Q So the specific issue here, assuming that's true, would
6 not have been found in the data reconciliation which
7 reconciled the PID version 3.0; isn't that true?

8 A It would not be found in reconciling to 3.0. That is, of
9 course, part of the point that when the PID versions
10 changed, as they have, going through the audit and the
11 data reconciliation based on prior versions of the PID
12 necessarily can't uncover all of the issues that can arise
13 when you change the PID. And that was one of the reasons
14 that the Department thought it was a valuable exercise to
15 do some additional data reconciliation with more
16 up-to-date data and the current PID versions so that we
17 could see if there were continuing or new issues as a
18 result.

19 MR. STEESE: Your Honor, I move to strike the
20 last portion of this statement. I just asked a question
21 as to whether this was possible for PID version 3.0, and
22 the witness went well beyond that response and explained
23 why she thought a data reconciliation that I didn't ask
24 about was a valuable exercise.

25 JUDGE LUIS: After the first sentence, you're
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1 correct, the response did go beyond the scope of the
2 direct inquiry. So that is stricken. The first sentence
3 can stand.

4 BY MR. STEESE:

5 Q In looking at PID version 4.0, you make or reach the
6 conclusion that Liberty did not uncover this in its audit.
7 How do you know Liberty wasn't the source of this
8 particular change?

9 A Well, as I understood it, the audit didn't cover this new
10 PID version, so I'm not 100 percent sure that Liberty was
11 not the source of it, but I did not see anything flagged
12 in the audit report that discussed it.

13 Q And so you're not aware that Liberty went and audited PID
14 version 4.0 -- changes to PID version 4.0 that had
15 occurred?

16 A I'm aware that Liberty did some auditing on 4.0. Whether
17 they audited each and every one of the changes, I'm not
18 certain.

19 Q And you have no recollection or knowledge as to whether
20 they audited PID version 4.0 as it relates to OP-6A?

21 A Off the top of my head at this point, I don't recall

22 whether it was OP-6A, but the audit report did not, that I
23 recall, mention this problem. That's why I pointed it out
24 in my testimony.

25 Q And the audit report you're talking about is the original
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1 audit report dated September of 2001 that audited PID
2 version 3.0?

3 A That report and any documents that I saw concerning
4 Liberty's efforts thereafter. So if there was something
5 thereafter that uncovered this, I didn't see any
6 documentation from Liberty that said they had audited and
7 uncovered this problem.

8 Q Did you ever contact Mr. Stright and ask him whether he
9 had uncovered this particular issue in his audit?

10 A I don't recall asking Mr. Stright about this specific
11 issue. Mr. Stright did have a chance to read and respond
12 to my earlier testimony, but not to this testimony. I
13 don't recall that that issue came up in any communications
14 we had.

15 MR. STEESE: That's all the questions I have,
16 Your Honor.

17 JUDGE LUIS: Thank you. Are there questions
18 for this witness by way of cross-examination or other from
19 any other intervenor? From the staff?

20 MR. SMITH: We do have a few.

21 JUDGE LUIS: Mr. Smith.

22 CROSS-EXAMINATION

23 BY MR. SMITH:

24 Q Good morning, Ms. Murray. Ray Smith from the commission
25 staff.

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1 A Good morning, Mr. Smith.

2 Q Do you have Exhibit 146 in front of you, which is the FCC
3 statistical methodology from the Bell Atlantic New York
4 271 order?

5 A I think it was up here yesterday. Let me see where it
6 went to. I have my own copy actually. I don't see the
7 official copy.

8 Q That should be fine. And my questions I think are on
9 paragraph 14, which is on page 8 of the document.

10 A Yes.

11 Q The second sentence talks about that Section 271
12 applications can use alternative statistical tests that
13 are of similar power and efficiency. Are you familiar

14 generally with the concept of statistical power?

15 A Yes, I am.

16 Q Could you explain what that means to the Court?

17 A A powerful statistical test is one that, to make it as
18 simple as possible, makes the most use of the data. That
19 is extracts the most information out of the data for a
20 given question.

21 Q Would you describe the 1-tailed test that Qwest advocates
22 as being less powerful than the dual test that you
23 advocate in your testimony?

24 A You can only -- I can't answer that specifically yes or no
25 without a little explanation. That's why I'm going to

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1 start with that.

2 You can only compare the power of statistical
3 tests by asking whether they -- within the class of tests
4 that are answering the same question. So within the class
5 of tests that balance type 1 and type 2 error, set them
6 equal, the test that I have proposed is the most powerful.
7 The citations to the statistical text in my testimony cite
8 to that. Qwest's test is in a different class. It's a
9 class of test that does not set type 1 and type 2 error
10 equal.

11 So of the class of tests that is a classical
12 statistical test, not making use of prior information and
13 setting alpha, the type 1 error, equal to .05, Qwest's
14 test is the most powerful. Unfortunately, that's an
15 apples and oranges thing because they are two different
16 classes of test. And in statistical terms, you can't
17 literally compare power of tests unless you're talking
18 about tests within the same class.

19 JUDGE LUIS: Did you say setting alpha?

20 THE WITNESS: Alpha.

21 BY MR. SMITH:

22 Q Would you agree that it makes it very difficult to
23 interpret what the SEC means by this sentence then?

24 A It does mean that what you can say what the FCC means here
25 is if someone else were to recommend a classical

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1 statistical test designed to set .05 as the confidence,
2 the alpha, the type 1 error, the 95 percent confidence
3 level, but had some other kind of test from the modified Z
4 test that Qwest used for the large numbers, or the
5 permutation test for the small numbers, they would have to

6 show that that test was equally powerful, and frankly,
7 they could not within those parameters. That's one reason
8 for the so-called modified Z as opposed to the straight Z.
9 I know this is all statistical gobbledygook to most
10 people.

11 But there is, within the set of those of us
12 who were forced to go through this in graduate school and
13 teach it to undergraduates, there is a little set of
14 things one can do to compare. And so what the FCC was
15 saying here is really, you know, don't come in and tell us
16 you want to use the Z score rather than the modified Z
17 because that's not going to be equally powerful, for
18 example.

19 If you want to come in and show us that
20 you've got some other kind of test and it's a powerful and
21 efficient test, within the parameters of that test, we'll
22 consider it. As I said in footnote 3, for example, they
23 would consider the test. They said in other footnotes
24 they would consider another test that balanced type 1 and
25 type 2 error. In fact, they liked that idea.

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1 But I agree that as guidance to a state
2 commission, this sentence is not exactly definitive on
3 what statistical tests you can consider.

4 Q You don't read this statement as being one that precludes
5 the statistical test that the Department of Commerce is
6 advocating the Commission use in its recommendation to the
7 FCC?

8 A Absolutely not. One of the reasons that I thought long
9 and hard about any alternative statistical test is I was
10 aware of this sentence and very much restricted myself to
11 considering alternatives that were fair with respect to
12 this criterion.

13 Q In another area I guess, in looking at Qwest's performance
14 generally in terms of either the performance results that
15 have been distributed in various exhibits or the documents
16 like the blue pages, would you agree that the statistical
17 results from the FCC, if they fail the benchmark or
18 parity, raise a red flag that the markets are not open to
19 competition?

20 A I would certainly agree that that's one red flag. It's
21 not the only red flag that, given the nature of that test,
22 if they fail that test, I would be very concerned.

23 Q Do you believe that the FCC, if they -- if Qwest exhibits

24 performance that meets the parity or benchmark standards
25 in the performance results stops its investigation or

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1 considers the matter in Qwest's favor, at least on a prima
2 facie basis?

3 A Not necessarily. Again, I think the FCC, in this order
4 and several others that I have reviewed, is quite clear
5 that it's conducting that review within the parameters of
6 the evidence put on there. And in this case, for example,
7 the only statistical options that seem to have been
8 considered were the 95 percent 1-tailed test and an
9 alternative 85 percent test of the same sort where there
10 hadn't been a definitive proof that it balanced type 1 and
11 type 2 error.

12 So once the FCC decided, based on that
13 record, to prefer the 95 percent test, then I think it is
14 generally true, with some other exceptions that the FCC
15 did ask, were the underlying data good to begin with. But
16 once you had proven that the data were of good quality and
17 that the test was accurately calculated, and based on this
18 record the FCC had accepted that test as the best one
19 before it, then I think unless somebody brought out some
20 other reason to think there was something really strange
21 going on, the unfiled agreements in Minnesota would have
22 been an example.

23 That the FCC generally, I think that's the
24 word the FCC used, generally, the inquiry stops here.
25 That's not the record in this case.

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1 Q And in the state of the performance results where Qwest
2 has not met the benchmark or the parity standards, the
3 FCC's investigation seems to be are there, to use
4 Mr. Williams terms, is there some context to the data that
5 should allow the FCC to ignore the red flag, if you will;
6 is that fair?

7 A I think that's putting it a little strongly. The FCC has
8 then laid out a number of things that the incumbent would
9 need to show to overcome this showing. And the context,
10 as you put it, is fairly specifically defined. For
11 example, is it competitively significant. That's one
12 question Mr. Williams raised. My statistical test has a
13 specific measurement for competitive significance. The
14 criterion, the .28 or the .43 standard deviation, the
15 former being the precise one the KPMG and the ROC test

16 determined to be competitively significant. So mine
17 answers that question. Qwest has done that on more of an
18 ad hoc basis. Mr. Williams talked about several measures
19 and gave his impression of whether it was competitively
20 significant. That's certainly one thing, though, the FCC
21 requires. The FCC requires the RBOC -- R-B-O-C, Regional
22 Bell Operating Company -- to look at what the trend is.
23 They require some discussion. As you say, if there is an
24 anomaly in the data, there is an opportunity to bring that
25 forward.

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1 Those are all specific things, so I guess I
2 would put it in this context that once the measure is
3 failed by whatever statistical test the FCC deems to be
4 appropriate in that proceeding, then it would be the
5 responsibility of the company advocating 271 authority,
6 the moving party, to come forward and say here is why I
7 think this finding is not enough. But the FCC has said it
8 looks at everything in context. So context, of course
9 they're going to look at the whole record. This
10 Commission will as well, I'm sure.

11 Q In terms of the way Qwest is presenting their performance
12 results as evidence of checklist compliance, is there step
13 1, is there a red flag; step 2, when there's a red flag,
14 is there a mitigating factor; is that fairly comparable to
15 what's been presented by other BOCs in 271 applications?

16 A Yes and no. Qwest tends to blend the red flag and the
17 excuse more than other companies do. There is -- in other
18 words, you don't really have a long expositional piece of
19 testimony from some witness talking about what the data
20 anomalies were and the mitigating factors.

21 It's sort of written in balloons on the blue
22 chart when they've already colored in the region in a
23 different color, as opposed to simply showing, well, this,
24 this, and this missed. That was one of the things we
25 tried to do differently so that you could see each step of

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1 the data.

2 But certainly the general process generating
3 results and generating their explanations for bad results,
4 that general process is similar to what others have done.

5 Q Have you done analysis of other RBOC performance in other
6 states or other states in the Qwest region, for Qwest
7 obviously, that would, I guess, maybe duplicate your

8 results showing that there should be a lot more red flags?

9 A No, I have not attempted to do that.

10 Q Would you agree that your statistical approach raises more
11 red flags for the FCC to look at and would then probably
12 lead Qwest to come up with more mitigating factors or
13 excuses or balloons, if you will, on your reports when
14 they would present it to the FCC?

15 A I would certainly agree that the approach I've used does
16 create more red flags and require further explanation. It
17 also takes away one level of that explanation, that is
18 competitive significance, unless Qwest were specifically
19 to contest the .28 or .43 standard deviations as a measure
20 of competitive significance. That's already been
21 assessed.

22 In terms of trends or consistency, we've
23 already reported how many months, for example, a measure
24 has been missed. So there are more red flags. Some of
25 the excuses or explanations have already been addressed so

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1 that it would be a matter for Qwest to address further
2 reasons why those red flags should not be enough to cause
3 the FCC to be concerned. It might be they're interested
4 in hearing those explanations.

5 JUDGE LUIS: Ms. Murray, just briefly, see
6 whether I was hearing you correctly. At the beginning of
7 your answer to that one you said I would certainly agree
8 that the approach I've used?

9 THE WITNESS: Yes.

10 JUDGE LUIS: Is that right? That's what you
11 said?

12 THE WITNESS: Yes.

13 JUDGE LUIS: Okay. Thank you.

14 BY MR. SMITH:

15 Q If the Commission accepts your method of looking at how we
16 detect the red flags, can you imagine that Qwest's first
17 response or mitigating factor excuse for the additional
18 red flags would be, well, Minnesota used a different
19 statistical approach than the other states, our response
20 is we used the same test as New York, so the FCC needs to
21 look no farther -- further?

22 A I wouldn't be surprised if Qwest raised that argument. I
23 would expect that there would be, then, inquiry about
24 alternative statistical methods and which is better. But
25 I can't predict exactly what arguments Qwest would raise.

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1 Q And what would you have the Commission tell -- the
2 Minnesota Commission tell the FCC in defense of its
3 standard to respond to that claim?

4 A I would have the Minnesota Commission tell the FCC that
5 the Minnesota Commission held an extensive proceeding with
6 several rounds of testimony, many opportunities, including
7 opportunities at the hearing, for Qwest to defend its
8 statistical methodology beyond simply saying everyone else
9 has done it. And that with the limited exception of an
10 affidavit from an AT&T witness in a non-271 proceeding in
11 1998 that was brought forward in the redirect stage of
12 Mr. Williams, Qwest did not offer any defense of its
13 statistical method as a statistical defense.

14 So that considering the entire record before
15 it, the Minnesota Commission found the Department had
16 presented a more compelling test, particularly given the
17 economic and policy rationale described at length in my
18 June 10 testimony and subsequent rounds of testimony that
19 explained why this is the appropriate public policy
20 criterion, the appropriate method for assessing burden of
21 proof in a proceeding where there is an irrevocable
22 decision being made about allowing Qwest into the long
23 distance market.

24 And I would have the Commission explain that
25 Qwest chose never to respond to that public policy

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1 rationale so that the Commission, as an agency charged
2 with the public interest in Minnesota, determined that the
3 public interest in Minnesota was best met by the
4 Department's statistical criterion.

5 Q But in the end, we both recognize that the FCC may not
6 listen to our -- the Minnesota Commission recommendation?
7 They're not required to; is that correct?

8 A That is correct. The FCC has said that recommendations
9 from a state commission are like recommendations from an
10 expert witness. They will consider them, but like an
11 expert witness, you have to take your chances. You may or
12 may not be accepted based on the quality of your
13 rationale.

14 Q Next I'd like to move to what I believe is Exhibit 157,
15 which is a copy of your August 29, 2002 testimony, and I'm
16 looking at paragraph 54 which is on page 26.

17 A Paragraph?

18 Q 54 on page 26.

19 A Thank you. Yes.

20 Q You introduced the idea that the performance measures
21 should somehow be bifurcated into ones that have
22 competitive significance and some that have some more
23 tangential relationship to things CLECs care about?

24 A Yes, generally.

25 Q Are you suggesting that if Qwest fails some of these

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1 tangential performance measures that the Department of
2 Commerce is saying the FCC shouldn't be as worried about
3 them?

4 A Not exactly. What I said is that what constitutes a
5 material difference, or what is a competitively
6 significant difference, in performance will be greater for
7 something that isn't as critical to a CLEC. So for
8 example, something like the trouble rate, like the measure
9 MR-8, is going to make a lot of difference to a CLEC's
10 ability to compete in the market. And I would establish
11 that a smaller difference would be -- in performance would
12 be competitively significant or a material difference
13 there.

14 Where something has a relationship, because
15 everything in the PIDs has been determined to have a
16 relationship to wholesale service quality and
17 discrimination issues, but it's not as central to a CLEC's
18 ability to compete, then it's my view that it would take a
19 bigger difference, a greater disparity between performance
20 for Qwest retail and the performance for the CLEC and
21 wholesale to make a difference in the marketplace. So I'm
22 not saying that once you've established that difference,
23 that it's okay to fail. It's just that I actually made it
24 harder for Qwest to fail those measures. That is I said
25 it won't be competitively significant unless Qwest's

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1 performance on behalf of CLECs is much worse than its
2 performance on behalf of itself. Whereas for the other
3 measures, I said Qwest would fail, that is it would be
4 competitively significant, if there were a smaller
5 difference in performance.

6 So failure once you've established those
7 standards always matters. It's just that it takes a
8 bigger disparity in performance where it's not as crucial
9 to the competitor.

10 Q So I shouldn't read this testimony that the Department of
11 Commerce has created a list of important PIDs and
12 tangential PIDs that the Commission should focus its
13 efforts and investigation equally?

14 A Right. I would read this a little bit similar to the
15 Performance Assurance Plan where there are different tiers
16 of PIDs and different criteria that you can have penalty
17 on any of them. Here you can have a fail on any PID.
18 It's just that for some of them, the failure is more
19 consequential, so you have to have a much smaller
20 tolerance for differences from parity or differences from
21 a benchmark.

22 Q In this proceeding, the 1371 cases, has the Department put
23 together a list analogous to tier 1, tier 2 PIDs that I
24 guess you're referring to?

25 A Well, we have established, and it shows in my work papers,
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1 which PIDs we applied the .28 standard deviation, that's
2 the lesser tolerance, and which PIDs we applied the .43
3 standard deviation measure.

4 Generally, we mapped to the wholesale service
5 quality standards that have been developed collaboratively
6 between a group of industry participants and government
7 participants, including the Department, and treated those
8 as the ones that got the smaller degree of tolerance.

9 This was, frankly, a concession. A
10 mitigation. KPMG just used the .28 for everything. I
11 tried to be very fair and very reasonable here. That's
12 how we developed that list.

13 Q Next I have Exhibit 158 which is your supplemental
14 surreply?

15 A Yes.

16 Q Also page 26, paragraph 59 this time.

17 A Okay. And the one you pointed me to is the public, so
18 it's redacted, I believe. Did you want to talk about the
19 trade secret material?

20 Q I'm going to try not to. I obviously have a yellow copy
21 in front of me, but I'm not sure that's going to be in
22 play here.

23 A Okay.

24 Q Are you familiar with the unbundling obligations for DSL
25 services in general?

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1 A In general, yes.

2 Q In terms of line sharing, line splitting and the other
3 obligations, is Qwest obligated to be a, I guess, a DSL
4 provider of last resort? If you're comfortable with that
5 term.

6 A I'm trying to think exactly what that term would mean in
7 this context. I would not -- certainly provider of last
8 resort is a term of art that generally refers to things
9 like universal service obligations or fundamental basic
10 exchange service. I am not aware of that terminology ever
11 having been applied to digital subscriber line, DSL,
12 services for Qwest or any other incumbent local exchange
13 carrier.

14 Q Maybe we'll go through some scenarios then. If I were a
15 retail customer of Qwest for voice service and I would
16 like to use a DLEC like Covad for my DSL service, that
17 would typically be called line sharing; is that correct?

18 A If you're going to get your DSL service on the same line
19 as your voice service. You could also get a separate line
20 from Covad, which Covad would probably lease from Qwest
21 for a stand-alone.

22 Q Thanks for that clarification. The question was unclear.
23 And if I am a voice customer of a CLEC, let's
24 say Worldcom, and I wanted to also have DSL from Covad,
25 that would properly be called line splitting; is that

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1 correct?

2 A Yes. Again, if that were on the same line that would be
3 called line splitting.

4 Q So the obligations from the FCC for these unbundled
5 network elements are to be evaluated in the 271
6 applications?

7 A Yes. Although I am not a lawyer, I will just point out
8 that I am aware that there is a pending issue as to the
9 nature of those obligations. But --

10 Q Which may or may not be resolved at the point in time that
11 this Commission makes its recommendation?

12 A Right. I will just say for purposes of my testimony, I
13 have proceeded as if the obligation exists to provide the
14 Commission with a record on that basis.

15 Q In terms of the unbundled network aspect of it, there have
16 been some CLECs that have asked that RBOCs be required to
17 provide the DSL service, whether it's megabit or the brand
18 of Qwest or some other product, as an unbundled network
19 element for when they provide voice over line. Are you

20 familiar with that argument or request?

21 A I'm trying to think if I'm familiar with that request as
22 an unbundled network element as opposed to, say, a resale
23 opportunity.

24 Q Maybe I'll clarify. That is not an unbundling obligation
25 for an BOC at this time to provide DSL?

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1 A That is correct. I am not aware of any unbundling
2 obligation for Qwest, or any other incumbent, to make DSL
3 service per se available as an unbundled network element
4 with the following limited qualification. There are
5 states, Wisconsin among them, that have decided that the
6 DSL capability over the incumbent's fibre should be made
7 available as an end-to-end UNE, unbundled network element.
8 And one might describe that as making DSL available as a
9 UNE. So just to be clear.

10 Q And Ms. Zeller, maybe if I get into trouble with the
11 bracketing issue here, please help me out a little bit.

12 In paragraph 59, you talk about a problem
13 that Qwest does something that they shouldn't do?

14 A Yeah, let's try it that way and see how we go.

15 Q Can you try to describe how you think Qwest should handle
16 a situation when they're faced with this type of order,
17 given their own pending order?

18 A Well, let's see, how are we going to do this on the public
19 record? Frankly, I think the situation in question is one
20 that doesn't have a simple answer. The public section of
21 paragraph 59 mentions that the issue regards Internet
22 service provided through an Internet service provider with
23 whom Qwest has a special relationship. That much is fine.

24 And what happens here are the complications
25 in the ability of competitors to access what are clearly

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1 unbundled network elements based on our prior discussion,
2 arise because of issues regarding this Internet service.
3 Obviously the Internet service provider is not a provider
4 of unbundled network elements. Qwest's relationship with
5 that Internet service provider, in that context, is not
6 part of unbundled network elements.

7 What needs to be worked out is some way where
8 this unregulated relationship, or at least not regulated
9 in terms of unbundled network elements, does not impede
10 the absolute right of competitors to have
11 nondiscriminatory access to the unbundled network

12 elements. And the solution to that may actually,
13 unfortunately, involve, in some sense, putting
14 restrictions on what Qwest itself can do. Because I'm not
15 quite sure if there are ways, without violating the
16 relationship between Qwest and the Internet service
17 provider, that you can fix, within the existing context,
18 how competitors could get access to the unbundled network
19 element in timely manner.

20 So I don't have a simple fix for this
21 problem. I'm rather bringing it to the Commission's
22 attention that this relationship has led to a problem.
23 I'm not suggesting that was some purposeful attempt to
24 circumvent the purpose of the act. But it obviously has
25 created a problem. And I think this is one where,

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1 perhaps, Qwest should participate in developing a solution
2 because I'm not privy to all the details of their
3 commercial relationship with the Internet service
4 provider. So I'm not quite sure everything that could be
5 done to solve this problem. This is exactly the kind of
6 thing where the Qwest and the DSL providers, for example,
7 sat down and put their heads together and tried to figure
8 out something to bring to us as a suggestion.

9 Q And I guess as I read this testimony, it struck me it's a
10 problem for the DLECs, it's a problem for Qwest obviously
11 in terms of 271 issue --

12 A Right.

13 Q -- as you raise it. But in terms of the discussion we had
14 earlier, it seems that both the DLECs and Qwest are kind
15 of caught by some, in no man's land, if you will, in the
16 unbundling obligations. Would you agree with that?

17 A I would definitely agree with that characterization. It
18 is a problem. It's not one that I think has really been
19 thought through before. It just arose and it should get
20 tidied up. I don't have a brilliant solution for tidying
21 it up at the moment.

22 Q And thank you for helping me with the issues and having to
23 not have problems with the trade secret issues.

24 My next questions I think all have to do with
25 your June 10, 2002 exhibit, which I have as Exhibit 154.

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1 First page 13, paragraph 23.

2 A And I think this is the one where we had some paragraphing
3 issues between the two versions, so let me make sure. Is

4 this a paragraph that begins Mr. Lundquist also shows?

5 Q Correct.

6 A Okay, then we're working off a similar version.

7 Q And I guess probably halfway through the paragraph you
8 start talking about manually handling, how it increases
9 costs, causes delays, and heightens the potential for
10 human error?

11 A Yes.

12 Q I guess in terms of each of those three results, I'm kind
13 of curious as to the manual handling that costs Qwest
14 money in terms of using people instead of an automated
15 process?

16 A Certainly it costs Qwest money. It probably also costs
17 the CLEC money because you end up usually then having to
18 do much more auditing and handling of problems and errors
19 than you would otherwise.

20 Q But the CLEC's costs come from the human error or the
21 delay, so sort of two and three of your clause?

22 A Yes, with the caveat that knowing the potential for the
23 human error, even if there isn't an error, the CLEC
24 probably incurs costs checking whether there has been
25 because you know that that risk exists.

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1 Q Do you see that the PIDs capture the delay for manual
2 handling of orders as currently in place?

3 A Not necessarily 100 percent of delays. Manual handling
4 occurs at a lot of points, even some points in what is
5 otherwise an automated process. For example, the process
6 of getting work completion notices posted in the system,
7 at some point somebody has got to enter in the fact that
8 work has been completed. So even a process that involves
9 a lot of automation almost always has some point where
10 some human being does something manually.

11 Q But in terms of if there's a delay in provisioning, let's
12 say, Qwest would take a hit in OP-3, OP-4?

13 A Generally that is correct, assuming that the data that are
14 manually entered get entered accurately so that the PID
15 captures them.

16 Q And if Qwest makes a mistake so that the order isn't
17 provisioned at all or is provisioned in error, again that
18 mistake shows up in some of the underlying PIDs?

19 A That mistake should show up in some of the underlying
20 PIDs. Again, not necessarily all of them and some of them
21 in different manners. For example, I talked about the

22 billing PID and the fact that you can get lump sum
23 corrections that happen and show up in one month and you
24 may not see them for months. And they don't show up at
25 all if the error is never acknowledged by Qwest.

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1 Q Moving on to paragraph 51 of the same exhibit, which is on
2 my page 24.

3 A Begins on the whole?

4 Q Correct. Thank you for that. You talk about how Qwest
5 seems to fail more PIDs that are parity based than PIDs
6 that are benchmark based?

7 A Yes.

8 Q And would you agree that parity PIDs are ones where, I
9 guess, the industry, Qwest, CLECs and regulatory bodies,
10 have agreed that there's a retail analog that is
11 appropriate to compare to Qwest's performance to wholesale
12 customers?

13 A Yes.

14 Q And where there is not a retail analog, that is Qwest
15 doesn't provide a similar service to itself, that
16 benchmarks are established?

17 A Yes.

18 Q Towards the bottom of my page 24, the end of the
19 paragraph, you note that Qwest is meeting benchmarks a
20 little bit more frequently than they meet parity PIDs?

21 A Yes. That was correct at the point of this. I believe
22 that is still correct as of the updated look, but I would
23 have to check that.

24 Q And the numbers you have are, you know, on an order of
25 magnitude 5 to 10 times as much in percentage terms. Can

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1 you account for why you believe there's a difference
2 between their performance on benchmarks and their
3 performance on parity measures?

4 A There are a variety of possible reasons. I noted that as
5 of the time of filing the June testimony, we had not
6 resolved this and still haven't had the chance to do a
7 complete analysis.

8 One obvious possibility, not saying that this
9 is what happened, but possibility, is that the benchmarks
10 are too easy. Parity PIDs, in some sense, retail
11 performance establishes so the industry didn't have to
12 guess what standard a performance should be achievable.
13 That's one possibility. A second possibility, putting a

14 more positive face on it for Qwest, is that benchmarks
15 make a very clear standard of performance to meet. You
16 don't know a priori, a p-r-i-o-r-i, what your average
17 retail performance in a given month is going to be. So to
18 tell your wholesale people, you know, thou shalt do
19 precisely this at an absolute minimum is not perhaps as
20 easy for a manager to do and to encourage people. So you
21 can certainly manage to meet a benchmark, it creates an
22 objective standard for people to work toward.

23 Then of course there is simply the
24 statistical issue and that is the issue that a parity PID,
25 the standard is measured with error.

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1 Q So in a benchmark PID the evaluation is what we call stare
2 and compare? You look at the numbers, if you miss the
3 benchmark, you fail; if you met the benchmark, you
4 succeeded; is that correct?

5 A That is correct.

6 Q And so you're saying that perhaps the disparity and the
7 failure could be the statistical results?

8 A Well, the statistical result creates a variation. That is
9 there might -- you're less certain with a parity measure
10 because you've got variance in measuring both the retail
11 and the wholesale performance. So you have less certainly
12 whether there is a real difference. Whereas with a
13 benchmark you know if there's a difference.

14 Q You characterize the statistical approach of Qwest or the
15 1-tailed test as sort of being stacked in Qwest's favor?

16 A Yes.

17 Q So that would typically suggest that they would get a free
18 pass on parity measures, wouldn't it, and that you would
19 probably expect they would fail more benchmarks than
20 parity measures?

21 A The -- let me step back and point to that the paragraph
22 you are discussing is one that's literally on the report
23 card that literally the section where we compared was --
24 without doing the statistical part of the analysis, is the
25 performance above or below the benchmark. Is the

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1 performance above or below the retail average. So this is
2 stare and compare versus stare and compare, if you will.

3 And so the comparison there is in part a
4 difference between the checklist items and then a
5 following section goes on and talks about the statistical

6 significance of the passes and fails. So this is before
7 applying that 5 percent type 1 error and doing the
8 statistical analysis at the 95 percent confidence level.

9 Q Okay. I think you've led into my next question and this
10 is the last sentence of paragraph 51 that begins for at
11 least one of these PIDs, one of these OP-4D. Is OP-4D --
12 OP-4, isn't that the installation interval measure as
13 opposed to installation commitment met?

14 A Let me see if I've got a typographic error here. You're
15 right. That should be corrected. I will do this right
16 now.

17 JUDGE LUIS: Yes, point out exactly where
18 this is, please.

19 THE WITNESS: This is in paragraph 51 of my
20 June 10, 2002 affidavit. And this would apply to all the
21 different copies. Unfortunately, it's on page 24 in the
22 trade secret versions. It may be on a different page.
23 I'm going to double-check that in a moment on the other
24 versions. So the parenthetical --

25 JUDGE LUIS: Paragraph number again?

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1 THE WITNESS: 51. 5-1. And in the trade
2 secret version this is on page 24. There is a
3 parenthetical after -- near the end of that paragraph,
4 after the letters OP-4D.

5 JUDGE LUIS: Yes.

6 THE WITNESS: And that says "installation
7 commitments" met, and that should, in fact, read
8 "installation interval". And I'll initial that and date
9 it. If you'll just give me a minute, I'll do it on all
10 three copies. Thank you for catching that.

11 JUDGE LUIS: So the parenthetical in its
12 entirety should read installation interval, close parens?

13 THE WITNESS: Correct.

14 JUDGE LUIS: Thank you.

15 THE WITNESS: And in the public version, by
16 the way, 154, that actually spans pages 23 and 24, the
17 correction will be at the very top of page 24.

18 JUDGE LUIS: All right. Thank you for that
19 note.

20 BY MR. SMITH:

21 Q And you talk about --

22 JUDGE LUIS: Just a second, Mr. Smith. When
23 you started the previous line of questioning about the

24 disparity between failure rates on benchmark versus
25 parity, where was that first reference? Where did you

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1 start it at?

2 MR. SMITH: It's paragraph 51 on page 24.

3 JUDGE LUIS: I don't know if the record had
4 indicated the paragraph number and the page number. Thank
5 you.

6 BY MR. SMITH:

7 Q You talk about the installation interval for unbundled
8 analog loops, that in the current PID it is a benchmark.
9 Is that --

10 A Yes. Let me just flip back, but that is my recollection.

11 Q And just to refresh the memory of anyone, the benchmark is
12 six days is the interval for OP-4D installation and
13 commitment interval for unbundled analog loops.

14 And your testimony is saying that they meet
15 the performance for the benchmark most months, but if you
16 established a parity for a retail analog, they'd fail?

17 A That is correct.

18 Q What retail analog are you using?

19 A In that context, I believe we were using the retail analog
20 of installing basic exchange service, which would include
21 the installation of a loop. Obviously that's not a
22 perfect retail analog.

23 Q And do you believe the Commission should accept that
24 retail analog in lieu of the ROC-agreed benchmark, even
25 though it's imperfect?

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1 A Not at all. That was not my proposal. This was simply an
2 observation about how the difference in the two approaches
3 to comparing whether Qwest passed a standard might lead to
4 a different result.

5 Q In general, however, if there's a retail analog in the --
6 in the PIDs, does the Department of Commerce believe that
7 should be the standard we use and the benchmarks in the
8 ROC are sort of the default unless there's reason to go
9 other ways?

10 A I don't think we've taken a position precisely on that one
11 way or the other. Generally we have not been
12 second-guessing the benchmark versus parity issue at all.
13 We have been reporting all of the results as if they were
14 a benchmark test because that's the way Qwest has been
15 doing the test or a parity test if that's the way Qwest

16 has been doing the test. We simply proposed a different
17 parity test.

18 Q In the last area of questions, hopefully the last
19 question, is on page 34, footnote 33 of the same exhibit.

20 A Okay, footnote 33.

21 Q And in this footnote you talk about how there are several
22 measures, submeasures, in the performance results where
23 Qwest has fulfilled all of its obligations on the retail
24 side, 100 percent performance in other words, and they've
25 fulfilled all of their obligations on the wholesale side,

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1 100 percent performance?

2 A Yes.

3 Q And you talk about how these results should be rescored in
4 Qwest's results because they don't provide any evidence of
5 whether Qwest is complying with checklist requirements.
6 Is that a fair summary of the footnote?

7 A Literally it is a fair summary. When I say they should be
8 rescored, I simply mean that was the application, the
9 literal application, of the rules for developing the
10 parity scores that Qwest had. I'm certainly not arguing
11 with perfection.

12 Q In terms of the state of the world the Department of
13 Commerce and the Commission would like, this is the ideal,
14 every retail customer is getting perfect service and every
15 wholesale customer is getting perfect service?

16 A That would certainly be the ideal. If the data that are
17 leading to that conclusion are reliable, then we would all
18 want everything to be perfect in a perfect world.

19 Q And you are not suggesting that the Commission should say
20 perfection has been achieved, therefore the Commission
21 shouldn't endorse Qwest's application that the local
22 market is irreversibly open to competition?

23 A Obviously not. That's why this is a footnote. It's just
24 a note that, literally, the methodology would require
25 this. We're not taking issue with the outcome.

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1 MR. SMITH: Thank you very much, Ms. Murray.
2 I have no further questions.

3 JUDGE LUIS: Mr. Smith, just one further
4 clarification. The footnote you referred to, is that in
5 DOC Exhibit 155?

6 MR. SMITH: Correct, Your Honor.

7 JUDGE LUIS: Okay. And it's footnote 33?

8 MR. SMITH: Correct again.

9 JUDGE LUIS: 33, which reads OP-3A
10 installation commitments met, does it start with that?

11 MR. SMITH: Your Honor, the footnote begins
12 "it appears Qwest did not compute --"

13 MR. STEESE: That shows up as my footnote 32,
14 Your Honor.

15 THE WITNESS: Yes, I just noticed that. In
16 the pink version the CLEC-specific version, from which
17 both you and I were reading, it shows as 33. It shows up
18 as 32 on page 33 in 155. Obviously, again, here something
19 went wrong in the redaction of this exhibit. I'm not sure
20 exactly what.

21 JUDGE LUIS: Let me just look at the
22 public -- yeah, it's also footnote number 32 in the public
23 version, 154.

24 THE WITNESS: What I'm guessing here is that
25 a footnote call is in the middle of a section that was

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1 redacted and so the entire portion between the trade
2 secret markings got redacted so the footnote numbering
3 changed.

4 JUDGE LUIS: These things happen. Just so
5 the reader can find their way around. All right.

6 THE WITNESS: Very fair.

7 JUDGE LUIS: Before we proceed with redirect,
8 Ms. Murray, in the academic world of economics, what is
9 the distinction between earning an MA and an MPhil?

10 THE WITNESS: At Yale the distinction, when I
11 was there at least, is that the MA degree signifies the
12 completion of a certain portion of core course work that
13 someone who was getting a terminal master's degree would
14 do. The MPhil is that very perverse badge of distinction
15 that says that you managed to stay in the program, pass
16 all of the course requirements, pass all of your oral and
17 written examinations for the doctorate, have an accepted
18 dissertation prospectus and then you discovered, as in my
19 case, that you needed to earn a living because the family
20 couldn't live on an assistant professor salary at Berkley,
21 where my then husband was teaching, and you didn't finish
22 your dissertation. So you get a finger shake at you and
23 you get an MPhil instead of a Ph.D.

24 JUDGE LUIS: Okay, sorry.

25 THE WITNESS: That's exactly how that works.

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1 It's a very rare degree because there aren't very many
2 people who stick it out that long and don't get their
3 Ph.D.

4 JUDGE LUIS: I've heard about ABD, you see
5 that in vitae, and that's all they're saying, but they
6 don't claim a MPhil as well.

7 THE WITNESS: That's the distinction. Yale,
8 I guess, created a degree for this situation so that we
9 wouldn't have to make up initials for ourselves.

10 JUDGE LUIS: All right. So there are people
11 in similar situations from other institutions that may not
12 have that. It's an institution-specific kind of award?

13 THE WITNESS: As far as I know. I think that
14 Yale was very creative in finding some way to recognize
15 how long we had hung around the department and how many
16 requirements we had completed.

17 JUDGE LUIS: Well, thank you for that
18 clarification then.

19 THE WITNESS: Sure.

20 JUDGE LUIS: If I had known what it was going
21 to be about, I wouldn't have gone into it.

22 THE WITNESS: That's quite all right.

23 JUDGE LUIS: Ms. Zeller, we'll take this up
24 in 15 minutes. We'll take a break before the redirect.
25 Off the record.

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1 (At this time a short recess was taken from
2 10:20 a.m. to 10:40 a.m.)

3 JUDGE LUIS: All right. I believe we're at
4 the juncture now where, Ms. Zeller, you may proceed with
5 the redirect examination this morning.

6 MS. ZELLER: Thank you, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. ZELLER:

9 Q Ms. Murray, Mr. Steese asked you about the Department's
10 effort on data reconciliation. Did the Department attempt
11 to extend its data reconciliation effort to recognize, to
12 some extent, the PID modifications?

13 A Yes, in the sense that the Department did some data
14 reconciliation with data that were taken at a later period
15 in time when a new PID was in place past the one that
16 Liberty had been working with at the time of its data
17 reconciliation.

18 Q Ms. Murray, yesterday Mr. Steese asked you a series of
19 questions concerning whether you had participated in the
20 ROC or prior state 271 proceedings in the Qwest region.
21 Do you remember that line of questioning?

22 A Yes.

23 Q Did you have a response regarding your participation? For
24 instance, you were not personally present, but have you
25 reviewed any documents from the ROC process?

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1 A Yes, I have. As I think is clear in my testimony, I have
2 reviewed documents pertaining to the Liberty audit, the
3 Liberty data reconciliation, the KPMG final report, the
4 KPMG interim report. I viewed on the web site several of
5 the observations and exceptions generated by both Liberty
6 and KPMG and the responses from Qwest and other comments
7 from other parties in the ROC.

8 I also had occasion to review a subset of
9 documents that might be minutes of ROC meetings, e-mails
10 generated or documents sent to the ROC outside of those
11 reports themselves.

12 Q How did you obtain the documents that you mentioned that
13 you examined in this process?

14 A I obtained those documents primarily from Susan Peirce,
15 who was a Department of Commerce analyst who participated
16 or was a liaison for the Department to the ROC.

17 Q You mentioned reviewed minutes of ROC TAG meetings. Did
18 you review minutes relating to the three sessions on PID
19 disaggregation to which Mr. Williams referred in his
20 redirect testimony yesterday?

21 A Yes, I did.

22 Q What did you conclude based on that review?

23 A Based on that review --

24 MR. STEESE: I'm going to object at this
25 point as outside the scope of redirect. I in no way

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1 asked, nor did staff ask, any questions about detailed
2 meetings. It was just whether she attended or not and
3 went no further than that.

4 JUDGE LUIS: Yes, that's my recollection.

5 MS. ZELLER: Your Honor, it's my
6 understanding that Ms. Murray has the opportunity to
7 respond on redirect to new information that was
8 disseminated through Mr. Williams' testimony.

9 MR. STEESE: Your Honor, if you'll recall, we

10 had a substantial argument about this wherein Qwest
11 attempted to put on the record new material in response to
12 AT&T and Department witnesses, and we were told we could
13 not so long as the issue was already an issue in the case.

14 And so Your Honor has already ruled that, in
15 this particular circumstance, our written testimony is the
16 written testimony and it was expected of all parties that
17 they have an opportunity to -- they've had an opportunity
18 to put material on the record already and that unless it
19 is a brand new issue --

20 JUDGE LUIS: It came up in testimony.

21 MR. STEESE: Correct. That came up that was
22 not discussed in the past, that it is forbidden to be
23 brought up anew.

24 MS. ZELLER: Your Honor, may I respond?

25 JUDGE LUIS: Yes, of course.

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1 MS. ZELLER: I would be happy to -- I have
2 the transcripts here, I would be happy to go through the
3 transcripts if you wish. I absolutely would state that
4 Your Honor stated that on redirect the intervenors would
5 have an opportunity to respond to new information that was
6 elicited during testimony.

7 MR. STEESE: And Your Honor did say that.

8 JUDGE LUIS: Well, that's right, that's what
9 I thought Mr. Steese was saying, too.

10 MR. STEESE: No, Your Honor did say that.
11 But then we attempted to bring in, in response to --
12 because the intervenors had the last word in written
13 testimony.

14 JUDGE LUIS: Right.

15 MR. STEESE: And we attempted to bring in
16 through oral surreply or oral material the opportunity to
17 raise and respond to new material. And Your Honor changed
18 his initial ruling and said you are no longer able to do
19 that so long -- the only opportunity is for a brand new
20 issue that was never raised in the past. And so you --

21 JUDGE LUIS: Yes, that was my initial
22 intention. You're right about that. New issues that come
23 up during testimony.

24 MR. STEESE: If a brand new issue comes up,
25 that is the only ability we have to expand upon the source

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1 for the written material in our testimony. And so unless

2 I have asked a question on cross that opened the door to
3 this particular issue, which I have not touched in my
4 cross, nor did Mr. Smith, Your Honor's ruling was that we
5 are now precluded.

6 And you asked Qwest specifically, because I
7 raised the issue, that Mr. Burns in his redirect had, in
8 fact, done that, and you asked me in the brief to identify
9 that specific testimony.

10 JUDGE LUIS: Right, and then I would consider
11 whether or not that -- whether I would delete it or not.

12 MR. STEESE: That is exactly correct.

13 MS. ZELLER: Your Honor, may I respond,
14 please?

15 JUDGE LUIS: Yes.

16 MS. ZELLER: Again, I would be happy to look
17 into the transcript and show that, but at that point,
18 Mr. Steese noted that there was a distinction here between
19 the CLECs having an opportunity to respond to new issues
20 brought up during testimony and the new issue ruling Your
21 Honor made regarding Qwest, and your answer was that your
22 ruling remains.

23 You did not, to my distinct understanding,
24 change your ruling regarding CLECs opportunity to having
25 the opportunity to respond to new information elicited

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1 from the testimony.

2 MR. STEESE: Your Honor specifically said the
3 opposite, with all due respect to Ms. Zeller. Your Honor
4 specifically said that all parties were limited to their
5 direct testimony, and their rebuttal testimony, written
6 testimony I guess --

7 JUDGE LUIS: Yeah, prefled testimony.

8 MR. STEESE: Unless a brand new issue was
9 raised. And this issue has been raised in Mr. Williams
10 testimony from January of 2002. From the very first
11 start. Disaggregation by zones, disaggregation by MSA or
12 not, that is specifically raised and discussed at length,
13 not only in testimony but in attachments to the testimony.
14 So this is not a new issue. And I would respectfully
15 request that Your Honor continue to maintain the rule that
16 is applied throughout the proceeding to this particular
17 circumstance.

18 MS. ZELLER: Your Honor --

19 JUDGE LUIS: Actually, I was going to, at

20 this point, ask you to iterate what it is that you're
21 trying to develop in this by way of an offer of proof.
22 And then I will consider whether or not to take it into
23 consideration in the record.

24 MS. ZELLER: Your Honor, my question to
25 Ms. Murray was did she review minutes of meetings of the
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1 ROC TAG relating to the three sessions on PID
2 disaggregation to which Mr. Williams referred in his
3 testimony yesterday.

4 JUDGE LUIS: Well, you haven't given me your
5 offer of proof yet. What was she going to say?

6 MS. ZELLER: She would respond with a
7 conclusion regarding the -- the disaggregation of UNE-Star
8 to UNE-P and the fact that the minutes do not show that
9 the intervenors, CLECs, agreed to that disaggregation.

10 MR. STEESE: Your Honor, this is a specific
11 issue that has been raised and we raised and we addressed
12 by Mr. Lundquist and Ms. Murray in their testimony. There
13 has been -- this is no new issue. As such, responding to
14 oral -- oral surrebuttal, so to speak, has been
15 specifically precluded of Qwest and a very consistent rule
16 should be applied across the board to all parties.

17 MS. ZELLER: Your Honor, actually, I don't
18 believe Mr. Williams put in any testimony before that
19 CLECs had agreed to this disaggregation. This is
20 something solicited in testimony.

21 JUDGE LUIS: All right. Continuing then
22 with -- I'll allow this as an offer of proof and I'll
23 decide whether or not it should go into the record. You
24 can ask her questions.

25 MR. STEESE: Your Honor, I feel the distinct

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1 need to put on the record that substantive due process and
2 the judicial cannons, frankly, require fair and consistent
3 treatment. And I asked specifically if I could ask
4 witnesses questions and I was told I could go no farther
5 than an offer of proof. And that was as far as I could
6 go.

7 And by allowing the Department here to go
8 farther than you have allowed Qwest, and specifically
9 precluded Qwest from going, is a direct violation of due
10 process. It is a fundamental abridgement of, frankly,
11 fair process. And she has put on the record what would be

12 said and that was as far as we were entitled to go.

13 MS. ZELLER: Your Honor, may I respond?

14 JUDGE LUIS: No. Just proceed.

15 BY MS. ZELLER:

16 Q Ms. Murray, did you review minutes of ROC TAG of three
17 sessions on disaggregation that Mr. Williams testified to
18 yesterday?

19 A Yes, I did.

20 Q And what did you conclude based on that review?

21 A Based on that review, I concluded that it would not be
22 possible for anyone who had not actually been a
23 participant in the meeting -- and let me be very clear
24 about this, I was not a participant in any one of these
25 three meetings, so I do not have firsthand knowledge of

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1 what was said -- but that it would not be possible for
2 anyone who had received either the agenda for the meeting,
3 and there was an e-mail in one case from Mike Williams
4 associated with that agenda with the proposed
5 disaggregation, or the minutes of the meetings themselves
6 to tell that the issue on the table was, what I would
7 call, reclassification. That is moving UNE-Star from
8 resale reporting, a completely different product, to a
9 subcategory of UNE-P.

10 Disaggregation, in common jargon, means
11 taking something from a big category and breaking it down
12 to a small category. And that's the words that are used,
13 so one would presume that you're taking something that's
14 already in UNE-P and breaking it down into smaller
15 categories. As Mr. Williams, I think, testified, the
16 words UNE-Star don't appear anywhere. There's no
17 reference to McLeod or Eschelon data. No reference to the
18 unfiled agreements. Anything like that. So it just
19 wouldn't be possible for someone who was not physically
20 present, either by telephone or at the meeting, to have
21 known that that was the topic.

22 I also concluded that what was written up in
23 the minutes at least did not indicate that CLECs had
24 signed off. There was some reference to people wanting
25 further discussion.

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1 JUDGE LUIS: All right. I'll leave that on
2 as the offer of proof.

3 In response to your comments, Mr. Steese, I

4 think this is all within my discretion, as it was several
5 days ago when you made the same sort of observation
6 regarding my ruling, to which I believe then was within my
7 discretion and -- as far as what can come into the record
8 and what cannot. And it is hoped that by making these
9 categorized as offers of proof, that then I will have the
10 opportunity to review whether I erred and if I erred I
11 will correct myself. Proceed, Ms. Zeller.

12 BY MS. ZELLER:

13 Q Ms. Murray, Mr. Steese also asked you questions concerning
14 telephone interviews with CLECs. Do you recall those
15 questions?

16 A Yes.

17 Q Could you please describe the overall effort of the
18 Department with respect to telephone interviews of CLECs?

19 A With respect to the 271 docket globally, the series of
20 dockets, the Department has conducted a number of the
21 interviews, either directly through members of the
22 Department or through consultants, not limited to myself
23 or people from my firm, but also people from Economics and
24 Technology, Incorporated, Mr. Clay Deanhardt, other
25 consultants perhaps who have been associated with the

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1 Department's effort.

2 These telephone interviews about 271-related
3 issues have occurred with both large and small CLECs. I
4 am aware with respect to specifically this proceeding, the
5 OSS phase of the docket, that in addition to the telephone
6 interviews in which I personally participated and in
7 addition to the ones that were deemed to be work papers
8 for my testimony, which dealt with the PIDs and with a
9 subset of the checklist items at issue in this docket,
10 there were also telephone conversations with other CLECs
11 conducted by other personnel who were doing that pursuing,
12 for example Mr. Lundquist and his team, pursuing the
13 checklist items that he was reviewing. People who were
14 working with me, Mr. Cratty, my business partner, and
15 Ms. Kientzle who had discussions with other CLECs
16 pertaining to other issues in my testimony, not PID
17 related.

18 And I understand that the notes of those
19 conversations have been turned over to Qwest. So I just
20 want to make it clear that the set of notes that we talked
21 about, which were notes of my personal conversations, are

22 notes that were work papers for my testimony did not
23 constitute the universe of all telephone interviews or
24 notes turned over.

25 Q On the topic of notes, you were asked also about notes of
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1 conversations with Bob Stright. Have you verified whether
2 the Department turned over those notes to Qwest?

3 A Yes, I have. There was only one telephone conversation
4 with Mr. Stright of which I am aware. I did not serve as
5 a note-taker on that conversation, so, as I responded to
6 Mr. Steese yesterday, I did not turn over any notes.
7 There were, however, notes taken by Susan Peirce of the
8 Department of Commerce and by Mr. Cratty who works with
9 me, and those notes were produced to Qwest in a data
10 response.

11 Q And did the Department follow-up that conversation with
12 written interrogatories?

13 A Yes, it did. What I relied on in my testimony, rather
14 than relying on any notes of the conversation, were, in
15 fact, Mr. Stright's written responses to Department
16 interrogatories. That's -- that seemed to me to be better
17 information than relying on simply notes that might or
18 might not be perfectly accurate or complete.

19 Q You were also asked about communications with AT&T
20 concerning the data reconciliation. Have you verified
21 whether the Department obtained AT&T's logs of orders?

22 A Yes. As I mentioned earlier, I believe in response to
23 Mr. Steese, the Department did obtain those logs in
24 mid-August of this year.

25 Q Did you rely on those documents as work papers in any way?
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1 A No, I did not. After the receipt of the logs from AT&T,
2 there is only one paragraph in any of my subsequently
3 filed testimony that deals with the data reconciliation,
4 and it does not in any way refer to the AT&T logs or rely
5 on those logs for any conclusion.

6 Q Did the Department receive any other data from AT&T
7 concerning their reconciliation?

8 A Yes, it did. It received certain, I think I would call
9 them spreadsheets, that are what we actually used in the
10 data reconciliation reported in June. These were
11 summaries, if you will, of some of the data that would
12 have been backed up by the logs.

13 Q Mr. Steese asked whether you lined up your conclusions in

14 paragraph 184 of Exhibit 155. That's your direct
15 testimony.

16 A I'm sorry, what was that paragraph again?

17 Q Paragraph 184 of Exhibit 155.

18 A Thank you. I have that paragraph.

19 Q Again, Mr. Steese asked whether you lined up your
20 conclusions in that paragraph with those of the Liberty
21 data reconciliation. Have you had a chance to refresh
22 your memory on that comparison?

23 A Yes, I have.

24 Q Can you quickly walk through each bullet of that paragraph
25 and explain whether it corresponds to the Liberty

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1 reconciliation results?

2 A Certainly. The first bullet, Qwest's interval
3 calculations for OP-4 are not consistent with its own
4 recorded dates. This finding did not have a direct
5 correspondence to the Liberty data reconciliation, at
6 least as reported in Liberty's public reports. I would
7 characterize that as a new finding, although Liberty did
8 mention issues with Qwest date recording. This particular
9 finding is somewhat different.

10 The second bullet, that there were many areas
11 of disagreement between AT&T and Qwest data, obviously
12 that was also a subject at the Liberty reconciliation,
13 that there were many disagreements.

14 Third bullet, that Qwest had not captured all
15 orders or trouble tickets for which AT&T had data. This
16 didn't line up perfectly. It's not a direct
17 correspondence to Liberty and the way it's reported here.
18 It's a slightly new finding. I would characterize it's
19 not exactly the same.

20 Fourth bullet, that some of Qwest's dates may
21 be inaccurate, particularly the application and completion
22 dates. That one does line up with Liberty. In other
23 words, this was an area that we found where the problem
24 was persistent to the extent that there had been a problem
25 before.

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1 The fifth bullet, differences in the
2 application data are a possible continuation of the
3 problem found. Obviously this does line up and it's a
4 continuation issue.

5 Next bullet, Qwest calculations may not be

6 catching all CLEC requested changes to due dates. That
7 one also I would characterize -- let me see -- as not a
8 direct correspondence to anything in the Liberty
9 reconciliation. That was basically a new finding.

10 I don't think that they perhaps had the
11 opportunity, frankly, I'm not sure that there were as CLEC
12 requested changes in due dates in the data that they
13 looked at.

14 Next bullet, Qwest does not always include
15 orders in the PID results for the months in which the
16 orders were completed. This is one where I think there is
17 a correspondence. In this case, how should I put it, I
18 would say Liberty found the same problem, Qwest had given
19 an explanation. Liberty was more comfortable with the
20 explanation than I was. I guess I would put it that way.

21 And I give somewhat the same response to the
22 next bullet that Qwest's interpretation of completion
23 dates for LIS trunks may skew the results for certain
24 PIDs. As I noted there, Liberty found this and concluded
25 Qwest's approach was reasonable. I had concerns that

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1 Liberty did not seem to have with that, and those concerns
2 are described in footnote 113 to that paragraph, which
3 appears on page 74. I think that, just quickly, so the
4 record is clear, is how the findings line up.

5 Q Ms. Murray, why did the Department conduct a data
6 reconciliation given that Liberty had already done that?

7 A One reason, of course, is as you mentioned -- or you asked
8 about before is that there have been changes to the PID.
9 Another, unfortunately, didn't work out quite as well as
10 we had hoped was that the amount of Minnesota-specific
11 information in the data reconciliation that Liberty
12 performed was somewhat limited. We were able to expand on
13 that, as I explained to Mr. Steese, by including another
14 product for AT&T that Liberty hadn't looked at for
15 Minnesota, although they've looked at it for some other
16 states.

17 We had hoped, frankly, our original intent,
18 was to do data reconciliation with companies that had not
19 been part of the original data reconciliation so that we
20 could look at some other products, important products like
21 UNE-P or resale, for example. Unfortunately, we ran out
22 of time and money and really could not get there. So the
23 original intent was to supplement the record even more

24 than we did. That's why we haven't emphasized the data
25 reconciliation findings more. I wish there had been more
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1 time.

2 Q Was it the Department's intent to limit data
3 reconciliation to only those products and CLECs with which
4 Liberty had performed reconciliation?

5 MR. STEESE: Objection, asked and answered.

6 JUDGE LUIS: Sustained.

7 BY MS. ZELLER:

8 Q Did AT&T first -- did you do AT&T first because they had
9 data readily available and had been through that before
10 and had hoped to expand it to other CLECs?

11 A The reason that we did AT&T first was precisely that we
12 were running so close to the wire for the June 10
13 testimony. I think I testified that we didn't get all of
14 the PID files until sometime in May. Which are a
15 precondition for doing data reconciliation. AT&T,
16 fortunately, having been through this once before, at
17 least knew how to collect the information for data
18 reconciliation, had people who had been through the
19 process.

20 So in the short time that remained to us, we
21 were able to get that kind of information from AT&T. It
22 just wasn't practical with other CLECs we had hoped to do,
23 for example, someone like Eschelon or some of the smaller
24 CLECs. They just weren't geared up for it, frankly, in
25 that time frame.

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1 Q Yesterday Qwest provided for the first time what it stated
2 was an analysis of performance for UNE-P versus UNE-Star
3 through Exhibit 145. Have you had a chance to perform an
4 initial review of that exhibit?

5 MR. STEESE: Your Honor, same objection. The
6 issue that this is going to is specific issues raised by
7 the Department. In this particular circumstance yesterday
8 Ms. Zeller specifically asked questions of Mr. Williams
9 that opened the door to this getting into the record.
10 Here, again, this is an issue that has been the
11 Department's issue. They have put testimony on in July or
12 June, whatever it was, in August and then again in
13 September. And they've had their chance to put their
14 evidence on the record.

15 And earlier Ms. Murray testified that

16 documents such as the AT&T-specific testimony,
17 Exhibit 164, they were aware of those. They could have
18 done this analysis very readily themselves just by working
19 with the CLECs that they had ready access to. And so in
20 this particular circumstance, I would strongly urge the
21 Court to adhere to its prior ruling and limit the ability
22 for oral redirect on issues that in no way were asked by
23 anyone on cross.

24 MS. ZELLER: Your Honor, I would like to
25 respond if I could.

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1 JUDGE LUIS: Yes, go ahead.

2 MS. ZELLER: Yesterday we were presented with
3 documents 144, 5, 146, 147, 148, 149, 150 through 152,
4 which were clearly documents that were to add to the
5 record in what amounted to an oral surreply. This is
6 certainly not within the bounds of that attempt to update
7 the record that Qwest put on yesterday. I certainly have
8 a right to respond to this new document that we had never
9 seen before yesterday's redirect of Mr. Williams.

10 MR. STEESE: Your Honor, with respect to new
11 documentation, Qwest's last written material was, I don't
12 recall the last date, August 23, something like that.
13 Since that time -- no, it's August 2. Since that time, we
14 have had two written rounds from the Department, and we
15 were specifically told that we could not react to the new
16 materials that we had been provided. That was -- unless
17 it was a brand new issue.

18 And so what the Department is asking is that
19 they get its cake and eat it, too, that we don't have an
20 opportunity to react, but that they do. And that's just
21 fundamentally unfair. Because they have had two rounds.
22 And Ms. Zeller, in her cross-examination, specifically
23 asked a number of questions, as did AT&T, of Mr. Williams
24 about UNE-P and the inclusion of UNE-Star and the impact
25 that it had on PIDs. So all this was doing would have

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1 been to directly -- this went directly to questions raised
2 by the Department. And that was Your Honor's ruling.

3 MS. ZELLER: Your Honor, I would assert that
4 Qwest's last written round of documentation is here on the
5 table and we absolutely have a right to ask questions that
6 concern this document.

7 MR. STEESE: But Your Honor, we were

8 precluded from that. We could not do that. When the
9 Department has had late August and September time. And we
10 were not able -- we were not entitled to respond to the
11 new documents.

12 And Your Honor, look at how many documents
13 Ms. Murray has put on the record since we have had a
14 chance, and this is just one copy. Look at this. We have
15 had no chance. We have had no chance at all. And we were
16 specifically told we could not reply orally, we could not
17 react to those new materials. And that's exactly what
18 they're trying to do here.

19 JUDGE LUIS: All right. I'll proceed the
20 same way. What is your offer of proof with respect to
21 this line of questioning, Ms. Zeller?

22 MS. ZELLER: I would ask Ms. Murray if she
23 had performed an analysis of 145 and any conclusions
24 regarding specific -- conclusions regarding specific
25 conclusions about performance for UNE-P versus UNE-Star

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1 drawn from that document.

2 JUDGE LUIS: And the answer would be what?

3 MS. ZELLER: The data would not show a
4 separation between UNE-P and UNE-Star orders.

5 JUDGE LUIS: All right. You can have that
6 offer of proof on the record. Move on to another matter.

7 BY MS. ZELLER:

8 Q Ms. Murray, would you please look at Qwest 151, the new
9 blue charts. These were offered yesterday through
10 Mr. Williams' redirect. Do you have that?

11 A Yes.

12 Q When asked why Qwest treated MR-8, the trouble rate PID,
13 as conditionally supporting the checklist, even where
14 Qwest had missed the parity standard in three or four
15 months, for instance resale products shown on page 20,
16 Mr. Williams claimed the trouble rates for both Qwest and
17 CLECs represent outstanding performance and that the
18 differences in the two weren't competitively significant.
19 Do you recall that?

20 A Yes.

21 Q Does the performance shown in Exhibit 151 necessarily
22 constitute outstanding performance?

23 MR. STEESE: I'm going to object at this
24 point for the exact same reasons. There was a blue chart
25 that was a part of Mr. Williams' testimony. Ms. Murray

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1 reacts to that and the blue charts at length in her
2 prefiled testimony. And all this is is a blue chart for
3 the Court that basically ties directly to the Exhibit 10
4 testimony. We did not ask any questions, Mr. Smith did
5 not ask any questions. The exact same objections as
6 before.

7 MS. ZELLER: Your Honor, I would state that,
8 obviously, Qwest was updating the blue chart for the
9 purpose of the redirect yesterday and we have a right to
10 respond to that new information.

11 JUDGE LUIS: All right. I'm going to treat
12 this the same way. You can make your offer of proof
13 regarding it.

14 MS. ZELLER: I would ask if the performance
15 shown in Exhibit 151 necessarily constitutes outstanding
16 performance. And the answer would be no. And if the
17 differences as small as the difference for Qwest as CLECs
18 on MR-8 to be competitively significant and the answer
19 would be yes.

20 JUDGE LUIS: All right. Appreciate that.
21 And that is preserved for you. And as with the previous
22 offer of proof regarding that exhibit, 145, you can, of
23 course, argue this at length regarding the significance of
24 these documents and the testimony given about them by the
25 Qwest witness in your briefs.

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1 BY MS. ZELLER:

2 Q Ms. Murray, during his cross-examination testimony,
3 Mr. Williams raised for the first time the issue of the
4 statistical criteria in the Minnesota Commission's adopted
5 Performance Assurance Plan or PAP. Have you had a chance
6 to review the relevant portions of the Qwest Exhibits 147
7 and 148?

8 A Yes.

9 Q Is the Colorado Performance Assurance Plan shown in Qwest
10 Exhibit 148 the Commission's final word on an appropriate
11 PAP?

12 A No, it is not. It is my understanding, as is reflected in
13 Exhibit 147, that the PAP, P-A-P, Performance Assurance
14 Plan, is subject to review after six months and possible
15 change. And that would include the statistical
16 parameters.

17 Q Ms. Murray, regardless of whether the Commission

18 subsequently modifies the Colorado-based PAP or keeps it
19 exactly as it's shown in this exhibit, would it be
20 necessary for the Commission to apply the same statistical
21 tests used in the PAP to judge 271 checklist compliance?
22 A No, it would not. Those are two very different items and
23 I am at least, I'm not a lawyer, but I'm not aware of any
24 legal requirement for the Commission to do that.
25 Q Do you see anything in the Qwest exhibit Commission order
0072

1 147 or in any FCC orders that you're aware of that would
2 require that those two tests be the same?

3 A No, not at all. There is nothing in the orders that I
4 have seen, whether it's these orders or the FCC 271
5 orders, that require that a Performance Assurance Plan
6 have the same statistical criteria as the 271 checklist
7 review.

8 Q Are there any reasons from an economic policy or
9 statistical methodology perspective to apply different
10 standards or statistical criteria in a PAP as opposed to
11 271 checklist evaluation?

12 A Yes, very strong reasons. My testimony of June 10
13 explained that you never begin a statistical inquiry by
14 just randomly picking off the shelf a test that you happen
15 to have used before. You pick it by asking yourself what
16 is the question I am trying to answer, why -- what happens
17 if I answer it one way versus another. And given the
18 consequences of that decision and the possible answers,
19 what statistical methodology is the most appropriate.

20 You also ask yourself what is the nature of
21 the information I have available to me, both the nature of
22 the information I am reviewing statistically and the
23 Bayesian question as I've described it, what other
24 contextual information which is Bayesian, B-a-y-e-s-i-a-n,
25 statistical term, is called the prior information. What
0073

1 information do I have.

2 Applying that approach to these two issues,
3 I've already explained in my testimony I think and I won't
4 belabor that, how this fits the 271 checklist context.
5 It's a one-time, irrevocable decision that you're making.
6 The a priori that I've chosen is a neutral one, neither
7 pass nor fail. But as I pointed out, there were actually
8 findings of the FCC and other state commissions that say
9 incumbent local exchange carriers have both the incentive

10 and the ability to discriminate. So the a priori very
11 reasonably would be the market is not open to competition
12 and Qwest is discriminating, which would have led to an
13 even more harsh test, frankly, than the one I applied.

14 All of that leads you to an appropriate test
15 for checklist compliance. Now, let's move to the
16 Performance Assurance Plan. This is, and I believe
17 Mr. Williams described it and it is described in
18 Exhibit 147, something that happens after a Commission and
19 the FCC have decided that a market is open to competition
20 based on the thorough review of the evidence. This plan
21 goes into effect at that point.

22 It's designed to prevent back sliding. It's
23 something that appears on a recurring basis. You don't
24 make one decision. You're making decisions over and over
25 and over again as to whether to apply penalties in each

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1 month for dozens of individual measures. Very, very
2 different kind of decision. There your a priori should
3 probably be that there's not discrimination. That is
4 you've already conducted an exhaustive proceeding to find
5 that the market is open to competition. So now you should
6 switch gears and say, all right, I'm going to presume that
7 Qwest is, in fact, not discriminating, but if there is
8 evidence that they're discriminating, you know, I want to
9 make sure that that doesn't happen and prevent back
10 sliding.

11 And the consequences now, Qwest pays a
12 penalty if it doesn't meet the standard of the PAP, but
13 there's always a chance every month and every month you
14 look over and over these things, so there's a chance of
15 looking that over. You also don't look at all the
16 measures in context. You look at each one individually
17 and you apply penalty, even if they're doing very well in
18 all the measures. Whereas in 271 you have all the
19 measures together and all the other evidence and only then
20 do you make your decision.

21 That's why you should apply a more rigorous
22 criterion for assessing a penalty per measure, per CLEC in
23 this context than you would apply to the overall
24 statistical evaluation of 271 checklist compliance.

25 Q Could you turn to Exhibit 148, that's -- that's the

0075

1 Exhibit K of the CPAP?

2 A Yes.

3 Q Page 1, Section 2.0.

4 A Okay.

5 Q What does the term self-executing mean in that section?

6 A Self-executing means that with some very limited
7 exceptions, which are described I believe later in the
8 document in section 15, beginning at page 17. With very
9 limited exceptions, Qwest will have to pay the CLEC a
10 performance penalty for a submeasure without going through
11 this kind of litigation process where they get to do a
12 blue chart and give their explanations and so on. That is
13 it's all automatic with a very few exceptions.

14 Q Are the PID results under review in the 271 checklist
15 proceeding self-executing?

16 A No. The PID results get looked behind. There is a whole
17 process for evaluating them in context.

18 Q So does the difference between the PAP and the 271
19 checklist review have any relevance to the appropriate
20 statistical criteria that are applied?

21 A Yes. I'm not a lawyer and this is not a legal standard,
22 but if I were Qwest, I would certainly feel very strongly
23 that the probability of what's called a type 1 error, that
24 is in this context assessing a penalty when Qwest really
25 was providing parity performance, should be very strongly

0076

1 controlled compared to the 271 context because Qwest is
2 not going to get much of an opportunity to explain that
3 away.

4 Q Could you turn to page 5, section 7, of that same
5 document?

6 A Yes.

7 Q Can you read the first sentence?

8 MR. STEESE: Which section?

9 BY MS. ZELLER:

10 Q Section 7.0, on page 5.

11 A The first sentence would be the one that begins 7.1?

12 Q That's right.

13 A Unless otherwise specified in this section 7.0, or in
14 Appendix A, payments to CLEC -- I think it means CLECs --
15 under the CPAP, the Colorado Performance Assurance Plan
16 which this Commission adopted, are to be made on a per
17 occurrence basis.

18 Q This failure of a specific PID or a specific CLEC or a
19 specific occurrence lead to a finding of noncompliance in

20 the 271 checklist context?

21 A No.

22 Q Does the difference between the PAP and the 271 checklist
23 review have any relevance to the appropriate statistical
24 criteria?

25 A Yes. Again, it's more important to minimize the type 1
0077

1 error of finding noncompliance in a context where every
2 failure for every individual CLEC on every measure counts.
3 And it counts -- there's no offsetting it with the overall
4 picture.

5 Q Turning finally to page 26 of the same exhibit.

6 A Okay.

7 Q You see Appendix A there?

8 A Yes, I do.

9 Q Could you please read the last sentence of that first
10 paragraph aloud?

11 A In areas -- in areas where this document suggests a
12 standard that is in dispute, parens, both procedurally and
13 substantively, close parens, as part of the Commission's
14 Section 217 review, parens, namely the standards for
15 collocation, TBD1, open parens, premature disconnects,
16 close parens, subloops, conditioned loops and line sharing
17 and line splitting, close parens, the standard listed
18 herein is meant as a default standard that would give way
19 in the event that the Commission adopts a different one.

20 Q From your reading of this document, is it your
21 understanding based on your review that the Colorado PAP
22 standards themselves were treated as being subject to the
23 final outcome of the Colorado Commission's 271 review?

24 A Yes.

25 Q So in other words, 271 would overtake or trump the PAP
0078

1 review method?

2 A With --

3 MR. STEESE: I'm going to object at this
4 point. By method do you mean statistical method or by
5 standard do you mean a standard as to benchmark or parity
6 because that is what standard means? So foundation. At a
7 minimum.

8 MS. ZELLER: Right. Statistical method is
9 what I meant.

10 MR. STEESE: Well, then I would object as
11 lack of foundation. Standard in the document clearly

12 means performance standard, benchmark parity, et cetera,
13 and so she's asking a question without foundation as to
14 whether standard means statistical application, which it
15 clearly is not.

16 MS. ZELLER: I can rephrase that, Your Honor.

17 JUDGE LUIS: Go ahead.

18 BY MS. ZELLER:

19 Q If applying the idea of standard as being benchmark
20 performance standards, in that case, would the 271 process
21 overtake or trump the PAP process if there were conflict
22 between those two?

23 A Yes, that would have potential implications for the
24 statistics because changing the definition of the
25 performance indicator definition of P-I-D, PID, could

0079

1 affect how it's analyzed statistically. But definitely at
2 least with respect to the standard or benchmark, that was
3 to be decided finally in the 271 proceeding.

4 MS. ZELLER: Thank you. That's all I have.

5 JUDGE LUIS: All right. Thank you. Let's
6 take a ten-minute break. Off the record.

7 (At this time a short recess was taken from
8 10:30 a.m. to 10:45 a.m.)

9 JUDGE LUIS: All right. We'll go back on the
10 record. I think we're into now recross. Now, Mr. Steese,
11 in connection with your recross, those areas which I
12 allowed Ms. Zeller to go into, I think there were two
13 different areas by way of offer of proof, one of which the
14 testimony was actually elicited as part of the offer of
15 proof and the other in which she summarized, you can
16 cross-examine on those areas and on the testimony that was
17 offered.

18 MR. STEESE: It's not my intention either
19 way, Your Honor.

20 JUDGE LUIS: You would be allowed to.

21 MR. STEESE: Thank you for that.

22 RECROSS-EXAMINATION

23 BY MR. STEESE:

24 Q Ms. Murray, you said that a 271 decision a couple of times
25 in your testimony here today is irrevocable. It is true,

0080

1 is it not, that the FCC under 271(d)(6)(a), as in apple,
2 has the right, if they deem a BOC to be in substantial
3 noncompliance, take a number of different types of

4 remedies?

5 A There are remedies, yes, but generally, putting the genie
6 back in the bottle and taking the BOC completely out of
7 the long distance market is not one that people
8 contemplate as being a very likely remedy.

9 Q Maybe not likely, but certainly specifically right in the
10 act itself is language that says the FCC has that
11 authority, doesn't it?

12 A I would agree the authority language is there. I don't
13 recall the exact provision of the act, but I'll take that
14 subject to check. I remember that generally. Again, of
15 course, not a legal opinion, but I remember the language.

16 Q Data reconciliation. Where you said you did a functional
17 data reconciliation for your, I'll call it your direct
18 testimony, your June testimony, correct?

19 A I don't remember the word functional, but we did look at
20 some of the AT&T information and compare it up with the
21 PID data.

22 Q When you looked at what you did, you took some, and I'm
23 trying to think of your exact words, I'm not trying to
24 change them, summary charts of AT&T, spreadsheets, what
25 was your word?

0081

1 A Spreadsheets that summarized information that would put
2 it -- provide us with some data fields that would match up
3 with some data fields that would be in the PIDs.

4 Q And you looked at the Qwest ad hoc data, I thought you
5 said, and compared it to the spreadsheets, is that your
6 testimony?

7 A I think it's mostly ad hoc data. There might be some
8 other files that went behind that.

9 Q Were you aware that the initial thought behind data
10 reconciliation in August, September 2001 when it started
11 was that was exactly what was going to happen, just that?
12 Summary documents from CLECs versus ad hoc data from
13 Qwest, were you aware that that was the objective or the
14 thought?

15 A I remember a reference to that. I don't remember if that
16 was the very first or that date. But I'll accept that
17 subject to check that that was the first.

18 Q Are you aware that Liberty Consulting concluded that it
19 was physically impossible to do a thorough, thoughtful
20 data reconciliation with just that data?

21 A I don't recall that conclusion, but certainly it's not my,

22 you know, I wouldn't dispute that. It's not anything that
23 we suggested would be the final word on data
24 reconciliation.

25 Q Looking at page 72, paragraph 184 of Exhibit 155.

0082

1 A Let me get the exhibit first and then we'll go to the
2 page. Which page?

3 Q 72. It is the data reconciliation.

4 A Yes.

5 Q Focusing on the difference in trouble tickets.

6 A The third bullet, is that the one you're looking at?

7 Q Correct. That was one of the three that you said was
8 either a new finding or a slightly new finding, correct?

9 A I don't remember if there were three of them, but I do
10 recall this one was somewhat different.

11 Q Isn't it true that during the course of your work, and
12 again your work I mean as more than you personally --

13 A Yes.

14 Q -- the work that has been done by you or your firm, that
15 there were a number of e-mails exchanged with Mr. Steven
16 Kyle about data reconciliation?

17 A Yes.

18 Q And do you recall the following statement, quote -- from
19 Mr. Kyle, dated May 14, '02 to a Ms. Susan Peirce, quote,
20 as we --

21 A Just hang on. May 14, '02, Mr. Kyle to Ms. Peirce, okay.

22 Q Quote, as we discussed on Monday, AT&T was not able to
23 identify all of Qwest's trouble tickets during the Liberty
24 reconciliation as well, so we performed that analysis
25 using the AT&T subset of trouble tickets. Do you recall

0083

1 that?

2 A I don't recall that specific phrasing. I recall that
3 issue having arisen.

4 Q And so are you aware that during the course of the data
5 reconciliation with Liberty as it related to trouble
6 tickets, specifically what your third bullet goes to here,
7 that in that specific circumstance, AT&T agreed to defer
8 to the Qwest data because their data was not as complete?
9 Are you aware of that?

10 A I believe in the Liberty instance that there was some
11 deferral and we were pursuing this issue. We found, as
12 the bullet says, in our findings that the incompleteness
13 went in both directions.

14 Q Turning to page 73, the third bullet down on that page, so
15 the sixth bullet total where you talk about Qwest
16 calculations may not be catching all CLEC requested
17 changes to due dates?

18 A Yes.

19 Q To the extent that a CLEC requests a due date earlier than
20 the standard interval, the process document specifically
21 tells Qwest to ignore that unless escalation is requested;
22 isn't that true?

23 A I believe that is correct. I would have to double-check,
24 but that sounds correct.

25 Q Looking at your first bullet on page 72, paragraph 184,
0084

1 that has to do with interval calculations for OP-4 are not
2 consistent with its own recorded due dates. The Qwest
3 process documents specifically say to record due dates
4 based on when an order is received; isn't that true?

5 A Could I just stop you for a minute? You inserted the word
6 due dates. It doesn't actually appear there.

7 Q I'll change that. That's even easier for me then. Qwest
8 interval calculations for OP-4 not consistent with its own
9 recorded dates, correct?

10 A That is what it says, yes.

11 Q When you look at an application date, isn't it true that
12 process documents specifically say orders received after a
13 certain time on a given day are counted as received the
14 next day, and so interval is based thereon?

15 A That is absolutely correct and that is certainly the kind
16 of thing that would have been part of the follow-up that
17 we said we were going to look at.

18 Q And the exact kind of thing that Liberty would be looking
19 at with a detailed review, not only of spreadsheets but of
20 thousands and thousands of pages of underlying source data
21 comparing CLEC data and Qwest data, correct?

22 A The same thing that Liberty would have been looking at and
23 we would have been looking at when we received the logs
24 from both Qwest and AT&T as requested.

25 Q Let's turn to statistics for a bit. The Bayesian test.
0085

1 To the extent that the objective of performance is
2 100 percent, so it's not trouble rate where you want it to
3 be zero, for example, you want it to be 100.

4 A Okay.

5 Q And the retail result is 100 percent, anything less, if

6 it's 99.9999, with a hundred more nines, is deemed
7 statistically significant difference, isn't it?

8 A There is -- literally, yes, because there is a problem
9 with if the performance is literally 100 percent, then you
10 don't have a standard deviation to work with in the
11 Qwest -- in the Qwest retail data. So there is a problem
12 in that limited extent.

13 Q And the same with zero. If the rate is zero, trouble rate
14 for example, and you're at .0001 trouble rate, it is a
15 statistical significance even though the difference is
16 incredibly fractional?

17 A If you're at point, I forget how many zeros, at 1, there
18 would be some standard deviation, so there is a
19 possibility of passing the result. If it were absolutely
20 zero, then there would be no standard deviation. But in
21 the case where there is literally no standard deviation
22 because the data don't marry, then you are correct.

23 Q I was asking at retail zero percent, CLECs .0001, since
24 retail has no standard deviation, again it shows
25 statistical disparity even those there's a fractional

0086

1 difference?

2 A That would be true in any test that works off of the
3 standard deviation, including the test that Qwest has
4 proposed, yes. The Bayesian test, Qwest's test, any test
5 where you're working with a standard deviation, if there's
6 no deviation, you've got a problem.

7 Q But the parity score, which is the second test proposed by
8 Qwest, doesn't have that limitation, does it? At least as
9 found in Exhibit Number 10.

10 A Well, as found in Exhibit Number 10, Qwest has modified
11 the literal rule of the test. I think the Commission
12 staff asked me about a footnote where we noted that the
13 literal formula for the parity score would actually also
14 lead to a problem, but Qwest has modified the approach and
15 not -- and not reported that.

16 Q Let's make sure we're talking about the same thing. If
17 you look at Exhibit 10, I don't know if you have it in
18 front of you. There are two statistical tests.

19 A And do you have a page?

20 Q You can look at any page that has the statistics. Any
21 retail parity standard. But you have the modified Z score
22 and the parity score, correct?

23 A Yes.

24 Q The modified Z score has the same limitation that you just
25 described, correct?

0087

1 A Yes.

2 Q However, the parity score does not, does it?

3 A Well, I think my answer would be the same, at least as I
4 understand the way the parity score is calculated. It
5 could have some of that limitation to it. That is you can
6 get a parity score. We talked about it, if both
7 performances were perfect, CLEC and ILEC being Qwest, the
8 literal formulation that I understand the parity score
9 would be a result of negative 1, which would be -- you
10 can't find a checklist compliance.

11 Now, Qwest didn't choose to treat it that
12 way. But that is my understanding, literally, from the
13 documentation on how the parity score is supposed to be
14 calculated.

15 Q But you haven't verified that?

16 A Well, that was my testimony. That is my recollection of
17 the formula for the parity score and that's why I put it
18 in there. I mean if there's something you want to point
19 me to that says we misunderstood the documentation, I'm
20 happy to look at it.

21 Q I'd like to turn you to Exhibit 10, page 238. And I'm
22 changing slightly here. I'm not taking you up on your
23 offer. But if you were to look at this specific area,
24 this focuses in on residential resale, correct?

25 A Yes.

0088

1 Q Maintenance specifically, correct?

2 A Residential repair, yes.

3 Q And you provided, as part of your work papers, detailed
4 spreadsheets that are many, many columns wide and many,
5 many columns tall; isn't that true?

6 A Yes.

7 MR. STEESE: And Your Honor, literally I
8 could not print this on any paper I think known to man.
9 So I'm just going to ask some questions that I think will
10 track fairly easily, but I cannot distribute this
11 document. It's literally not possible.

12 JUDGE LUIS: All right. That's understood.
13 Go ahead.

14 BY MR. STEESE:

15 Q Looking at the top chart, MR-3C, which is how many

16 troubles have been cleared within 24 hours with no
17 technician dispatch is required, correct?
18 A Correct.
19 Q Looking at your spreadsheet, you show, under the Bayesian
20 test, statistical disparity in November, January,
21 February, March --
22 A All right, wait.
23 Q -- and May.
24 A November, January --
25 Q I'll do them again. November, January, February, March --
0089
1 A March.
2 Q -- and May.
3 A Okay.
4 JUDGE LUIS: Please don't talk at the same
5 time.
6 THE WITNESS: Sorry.
7 JUDGE LUIS: Go ahead, Mr. Steese.
8 BY MR. STEESE:
9 Q Let me make sure we have the right ones one more time.
10 November, January, February, March and May.
11 A Yes.
12 Q Let's look at those. And I would also note that if you
13 look at the chart just below that, MR-4C, which is all
14 troubles whether they're out of service or not, clear
15 within 48 hours, correct?
16 A Yes.
17 Q And here you show statistical disparity, under the
18 Bayesian test, for November, December, January, March and
19 May. So very similar, but not exactly the same months?
20 A Would you just repeat those to be sure I have those?
21 Q I certainly will. November, December, January, March and
22 May.
23 A Okay.
24 Q Looking at those specific months, using the Qwest
25 statistical analysis, it shows parity under every month
0090
1 for MR-3C, doesn't it?
2 A For 3C. Yes.
3 Q And it shows parity for every month under MR-4C for the
4 months that you found to be disparity for the Bayesian
5 test, correct?
6 A Just a minute. Yes, that's true. It's out of parity in
7 October, but that's not in my list.

8 Q Your analysis started with November 4, correct?
9 A Right.
10 Q I think we talked at the same time. You said correct?
11 A Yes, correct.
12 Q Well, let's look at those months. In November 2001 --
13 A Excuse me, are we on 3C or 4C now?
14 Q 3C. And I'm just going to go all through 3C and then all
15 through 4C to make it simpler. November '01, 3C we show
16 60 of 61 or 99 -- excuse me, 98.36 percent of troubles
17 cleared for CLECs, correct?
18 A Yes.
19 Q For retail we have several thousand orders, but it's
20 99.11 percent, correct?
21 A Yes.
22 Q So the difference between 98.36 percent and 99.11 percent
23 on the Bayesian test shows a statistical disparity,
24 correct?
25 A Yes.

0091

1 Q So here you are specifically finding fault with Qwest
2 because of one missed trouble out of 61, correct?
3 A In this instance, I am finding that there is a
4 statistically significant result based on the Bayesian
5 test. Now, that doesn't prevent Qwest from going behind
6 that to observe that it's one instance. This is, I
7 believe as I answered in response to staff, this is a red
8 flag. That doesn't mean that you can't go behind it and
9 look to see if there's only one. I didn't say Qwest
10 should automatically fail the checklist item. I simply
11 said there is a red flag and that you can look.
12 Q But you also said, did you not, that competitive
13 significance is already built into your wonderful test,
14 didn't you?
15 A I said that competitive significance is built into the
16 test unless one wishes to contest whether for any -- and
17 this can be for any measure or for any other purpose --
18 whether the .28 or .3 standard deviation standard is an
19 appropriate standard of competitive significance. But
20 there is a standard of competitive significance built in,
21 yes.
22 Q Would any CLEC -- and did you go out to any CLEC based on
23 any measure that you used the Bayesian test for and ask
24 them is this going to be competitively significant to you?
25 A No, I certainly did not go to that additional step between

0092

1 getting the results on September 10 and now. We, instead,
2 relied on what we had, the KPMG test and so on, and the
3 analysis that I presented in my testimony.

4 Q And you would agree, would you not, that in this
5 particular circumstance, missing 1 trouble out of 61,
6 98.36 percent as compared to 98.11 for the retail side, is
7 not competitively significant, is it?

8 A I would agree for this one example that given the very
9 small sample size for the CLECs and only one miss that
10 it's not something that I would use to draw a conclusion.

11 This same rate of difference could be
12 competitively significant, but looking at the very small
13 numbers here of instance that we have, I would agree that
14 I would look behind this before making a recommendation to
15 the FCC for checklist noncompliance.

16 Q Looking at January 2002 under MR-3C again, 59 of 60.

17 A Yes.

18 Q You would reach the same conclusions?

19 A I would certainly agree that, again, we're talking such
20 small numbers that I would be willing to look behind that.

21 Q February 2002, 53 of 54, same conclusion?

22 A Yes.

23 Q March 2002, 67 of 68, same conclusion?

24 A Yes.

25 Q May 2002, 78 of 79, same conclusion?

0093

1 A Absolutely.

2 Q Moving down now to MR-4C, November 2001, 154 of 155,
3 99.35 percent versus 99.8 percent, so .55 percent
4 difference, same conclusion?

5 A Not because of the percentages that you read off to me,
6 but because of the absolute value of the CLEC denominator
7 and the differences. That is my answer is that it's even
8 possible for a difference of 98.33 versus 99.67 to be
9 competitively significant.

10 Anybody who has ever had an Internet service
11 provider drop off on them at a critical point will know
12 that your decision to select a different provider could
13 turn on a difference of this much, 1 percent or less, in
14 the availability of that provider. But if it were only
15 one miss in the whole experience of several hundred, I
16 probably would not walk away from my Internet service
17 provider.

18 So that's the kind of thing when you're
19 talking about something with a very high degree of
20 reliability is expected, which is obviously what we see
21 here on both the wholesale and retail side, absolute small
22 percentage of differences can be critical to the
23 perception of competition, but I would agree with you that
24 if we're talking about only one miss, no matter what the
25 percentage is, because the pool of data is so small, I
0094

1 would not find the one miss to be competitively
2 significant. And I certainly think that's the kind of
3 thing that should be brought to the Commission's attention
4 or the FCC's attention as Qwest, quote, looks behind the
5 data.

6 Q Let's look at December '01 and January '02. In those
7 months we didn't miss one, we missed two, 179 of 181, 189
8 of 191, would you reach the same conclusions there because
9 we're at 98.95, 98.9 percent it's only two, would you
10 reach the same conclusion?

11 A And my answer would be the same. It's not because of the
12 percentage. It's because we're dealing with a small data
13 pool and the absolute number of misses is only two. So
14 not -- no, in answer to your percentage part of the
15 question; yes, in answer to your question about the
16 absolute number of misses.

17 Q Absolute number of misses. Was there any circumstance
18 when you looked at specific performance in the Exhibit 10
19 or the functional equivalent thereof, because there were
20 prior iterations of this, where you went out to any CLEC
21 in the CLEC community and said there is a certain amount
22 of percentage problem here or there's trouble with this
23 metric, is this causing you concern, is this competitively
24 significant to you at this level of performance?

25 A Not literally that. We had feedback from a variety of
0095

1 forms about whether CLECs were concerned about various
2 performance indicators and were concerned about the
3 disparities that existed. I did not and I don't know of
4 anyone on my staff who solicited in the context of walking
5 through the PID results and said is this particular result
6 competitively significant to you. That seems to have been
7 discussed in the ROC process, and KPMG concluded that a
8 .28 percent -- or a .28 standard deviation measure was a
9 reasonable benchmark for competitive significance or what

10 constituted enough of a difference to make sure that you
11 were picking it up. But I certainly did not do that in --
12 specifically with respect to talking with individual CLECs
13 about individual PID results.

14 Q Turning to exhibit number -- it's Dr. Collin Mallows'
15 affidavit. I'm sorry, my copy here doesn't have the
16 exhibit number on it. Is it 150? To Exhibit Number 150.

17 A I have that exhibit.

18 Q I have looked at your CV and your CV shows you have
19 represented AT&T on various occasions?

20 A I only quibble with the word represented. I think that
21 actually refers to legal counsel. I have served as an
22 expert witness on AT&T's behalf.

23 Q That's all I mentioned. In the course of that work which
24 appears to span several years, did you will ever work with
25 Dr. Mallows?

0096

1 A No.

2 Q You did not?

3 A No.

4 Q You don't know him at all?

5 A Never met him.

6 Q Do you know of his work in the industry?

7 A Actually, I was not familiar with Dr. Mallows
8 specifically.

9 Q Have you had a chance to review the entirety of this
10 document?

11 A I glanced through it, but because the exhibit had been
12 limited to certain paragraphs, I didn't spend a lot of
13 time on the remainder of it.

14 MR. STEESE: Your Honor, I realized yesterday
15 that I limited this document to a few specific paragraphs,
16 which were the caption, his qualifications, paragraph 44
17 and paragraph 9, I believe.

18 JUDGE LUIS: It sounds right.

19 MR. STEESE: And I will again state I am in
20 no way attempting to make this an admission against
21 interest against AT&T, but there are a couple of other
22 paragraphs that I would like to ask about and ask that
23 there be a couple of extra paragraphs that be introduced
24 into the record. And I can name them and give AT&T an
25 opportunity to review them very quickly. There are not

0097

1 many.

2 JUDGE LUIS: Go ahead.

3 MR. STEESE: Paragraph 18, paragraph 21 and
4 22, paragraph 30. And that is it.

5 MR. WITCHER: Your Honor, I would renew my
6 objection from yesterday. This is literally hearsay as to
7 any purpose. The reason I raised the admission against
8 interest is that was the only possible exception I could
9 see to it coming in. We had a witness here who has not
10 even suggested that this is something that she would or
11 could rely upon, so you know through the expert exception,
12 I don't see it coming in. I mean, you know, this is well
13 beyond the scope of what I think would be appropriate
14 evidence. So I would renew it on that same basis of the
15 objection.

16 MR. STEESE: May I respond very briefly, Your
17 Honor?

18 JUDGE LUIS: Yes.

19 MR. STEESE: It is -- first of all, I
20 generally have not seen hearsay exceptions apply in the
21 course of regulatory proceedings, but be that as it may,
22 it is still generally regarded that impeachment through
23 recognized treatises or experts is something that is
24 fundamentally accepted.

25 Mr. Williams yesterday testified that

0098

1 Dr. Mallows was, in fact, AT&T's expert on the matter, and
2 I am attempting to be very focussed in a few specific
3 paragraphs and would ask that simply those be included in
4 the record. And to the extent that they are, I almost can
5 forego questions of this witness on the particular
6 subject.

7 MS. ZELLER: Your Honor, I'd like to
8 interpose an objection as well.

9 JUDGE LUIS: Let me see what you have to say
10 after I say that. This is not a learned treatise. This
11 is an affidavit prepared, presumably for money, for a
12 specific purpose; and thus, is not an exception to hearsay
13 rule. Yes, go ahead. And it's not the kind of item that
14 can be used in this context for impeachment on the basis
15 of the statement by the authority because it's a statement
16 outside a learned -- out of a learned treatise that has
17 been reviewed or accepted or there's any evidence of it
18 being juried in any way. Yes, go ahead, Ms. Zeller.

19 MS. ZELLER: I was simply going to state that

20 there is no connection to Ms. Murray's testimony. She
21 said she didn't know, wasn't familiar with this work and
22 this expert is not available for cross-examination. So my
23 objection would be based on those issues.

24 JUDGE LUIS: Okay. Anything else,
25 Mr. Steese, about this?

0099

1 MR. STEESE: I have nothing more to add on
2 this.

3 JUDGE LUIS: All right. No, I will not allow
4 you to use anymore of Dr. Mallows' testimony then.
5 Dr. Mallows' affidavit is already in the record.

6 MR. STEESE: May I ask general questions of
7 the witness about the similar subject, simply not
8 introducing this into the record?

9 JUDGE LUIS: Yes.

10 MR. STEESE: I think this will be acceptable.
11 If not, I'm sure I will hear from opposing counsel and
12 probably, Your Honor.

13 JUDGE LUIS: I'm sure these thoughts are
14 coming out of your own head, Mr. Steese.

15 BY MR. STEESE:

16 Q Certainly your testimony, Ms. Murray, is that the Bayesian
17 test provides the correct balance between type 1 error and
18 type 2 error in statistics, correct?

19 A For this purpose, yes.

20 Q And certainly looking at Dr. Mallows as it looks at
21 discrimination in a 251 context, his view is that type 1
22 and type 2 error are properly balanced with a 1-tailed
23 test, 95 percent statistical confidence level; isn't that
24 true?

25 MS. ZELLER: Your Honor, I would object to

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1 Mr. Steese's dependence on this exhibit that was not
2 accepted into the record for this line of questioning.

3 JUDGE LUIS: Sustained.

4 MR. STEESE: Your Honor, that actually comes
5 from the paragraphs that were allowed into the record.
6 Paragraph 44.

7 JUDGE LUIS: All right. Where are we at?

8 MR. STEESE: Paragraph 44. Paragraph 44 says
9 second, the 1-tailed test of type 1 error at about
10 95 percent level strikes a fairer balance between the need
11 to act for both type 1 and type 2 errors. That is what is

12 in the record. And that's all my question went to.

13 JUDGE LUIS: All right, let me have a look.

14 All right. And the witness is at that location in the
15 testimony?

16 THE WITNESS: Yes.

17 JUDGE LUIS: That is part of the record so I
18 will allow the question. I will reverse my earlier
19 ruling.

20 BY MR. STEESE:

21 Q Do you need the question restated?

22 A That would help.

23 MR. STEESE: If the court reporter could read
24 the question back?

25 (Whereupon, the requested portion of the

0101

1 record was read aloud by the Court Reporter.)

2 THE WITNESS: So you were asking if that was
3 Dr. Mallows' opinion and my answer is with respect to
4 paragraph 44 it appears to have been Dr. Mallows' opinion
5 that in this particular docket, in the matter of
6 performance measurements and reporting requirements for
7 operation support and systems interconnection and
8 operations -- operator service and directory assistance,
9 given the data pool that was available in that docket,
10 whatever the decisions the FCC was going to make in that
11 docket -- which frankly I don't know what they were -- and
12 whatever use the FCC was going to use of those data, and
13 given however large the pool of data was, which would -- I
14 think we heard before sample size would affect what the
15 relative type 2 error was in comparison to the type 1
16 error, given all of those things that are very specific to
17 this docket and the data that were going to be brought
18 forward, then the sentence reads literally what it reads,
19 that for whatever reason, and for whatever Dr. Mallows
20 considered in that context, he said that it struck a fair
21 balance. I would love to be able to converse with him
22 about exactly what he meant, but he's not here and I don't
23 know.

24 BY MR. STEESE:

25 Q Are you familiar with the particular docket that this

0102

1 affidavit was filed in?

2 A I don't remember this docket.

3 Q Changing subjects to the Minnesota Performance Assurance

4 Plan. The Minnesota Performance Assurance Plan decision
5 from the Commission that was passed out yesterday as
6 Exhibit Number 147, had you seen that before yesterday?
7 A Not that specific exhibit, no. I had had discussions with
8 the representatives of the Department about -- generally
9 about the Performance Assurance Plan, but I had not seen
10 Exhibit 147.
11 Q Had you seen Exhibit 148, the Colorado Performance
12 Assurance Plan?
13 A No, I had not.
14 Q Did you know that the Minnesota Commission adopted the
15 critical Z values found on Exhibit 148 on page 3?
16 A I did not know the exact values. I knew that there were
17 values adopted that had been part of the Colorado plan,
18 but that was all that I knew.
19 Q Did you know that they differed from 1.645?
20 A I was not made specifically aware of that at the time
21 these conversations occurred, no.
22 Q So the testimony that you provided certainly couldn't have
23 been in your first testimony since this decision came out
24 later, but the August testimony and your September
25 testimony was not written with the thought of what has the
0103
1 Minnesota Commission done in the Performance Assurance
2 Plan document, correct?
3 A That is correct. It was not something that I specifically
4 asked to be informed about for all the reasons that I
5 explained to Ms. Zeller, that I would have considered it
6 irrelevant. And it's not something that anybody brought
7 to my attention presumably because they didn't necessarily
8 consider it to be relevant.
9 MR. STEESE: That's all the questions I have,
10 Your Honor.
11 JUDGE LUIS: All right. Thank you. Anything
12 from any intervenors or staff in this round?
13 MR. SMITH: I have a few more.
14 JUDGE LUIS: Go ahead, Mr. Smith.
15 RECROSS-EXAMINATION
16 BY MR. SMITH:
17 Q I don't recall, Ms. Murray, were you on the bridge for
18 Mr. Stright's testimony a couple weeks ago?
19 A Yes, I think I was on for the entirety of that.
20 Q Are you familiar with the data reconciliation work done by
21 other RBOCs?

22 A Only in the most general sense. I haven't really looked
23 at that.

24 Q I asked Mr. Stright whether he could comment on data
25 reconciliation efforts between what Liberty did in the ROC
0104

1 and the other RBOCs and he said something to the effect
2 that he thought the other BOCs got off easy. Would you
3 dispute that testimony?

4 A I can honestly say I haven't looked in detail at what
5 happened with all of the other Bell operating companies.
6 I wouldn't dispute the testimony as it regards some of the
7 first 271 applications at the FCC because my recollection
8 is that full statistical testing and performance data
9 weren't even used. So almost by definition I'm sure that
10 Qwest has been subjected to more than that.

11 As to more recent applications in other
12 regions, I can't offer an opinion. I'm not sufficiently
13 intimately involved to compare the two.

14 Q When the FCC looks at commercial performance under the
15 checklist and third-party testing, would you be
16 comfortable with the statement that the FCC has said we
17 view commercial performance the best indicator of
18 checklist compliance, and then we look at independent
19 third-party testing as sort of a second tier measure, and
20 then the third tier evidence would be testing done by an
21 individual company?

22 A I don't specifically recall the third tier, but I
23 certainly do recall the first two. That is that the FCC
24 preferred commercial performance data, where available,
25 over third-party tests, such as the KPMG OSS test we had
0105

1 here.

2 Q And you're comfortable that the Minnesota Commission
3 should follow a similar standard in its evaluation?

4 A Generally, yes. For all the same reasons that the FCC
5 sometimes looks behind commercial performance data, the
6 data might be very thin, don't lead to conclusions. The
7 other data sources are helpful, but certainly if you want
8 to know if a market is open, best to use data about that
9 market.

10 Q And in terms if Qwest were to present some sort of
11 internal study to supplement commercial performance and
12 the independent third-party test, where would you kind of
13 put that in your weighting of what we should consider?

14 A Clearly I would put it lower in that it's a piece of
15 evidence that hasn't been subjected to the same level of
16 scrutiny. It's hard to know how the data were actually
17 assembled. We already know from the processes that have
18 gone on that, with all the best of intentions, manual
19 entry errors occur, formula errors occur and so on and on.
20 So obviously at that point you're dealing with a piece of
21 evidence that simply isn't as reliable.

22 Q Ms. Zeller asked some questions, I think, about the data
23 you looked at for AT&T. Are you familiar with the UNE-P
24 trial that AT&T conducted in Minnesota?

25 A I am generally familiar with that.

0106

1 Q And that trial would produce some data about how Qwest
2 performed under a test that AT&T undertook to see if they
3 could provide service here in Minnesota; is that correct?

4 A That was my understanding, yes.

5 Q First question is in the commercial data that you've
6 looked at and that I think Qwest introduced in the record
7 today as Exhibit 164?

8 A Yes.

9 Q This AT&T data, do you know if it segregates test results
10 for AT&T under the UNE-P trial from, let's say, AT&T
11 broadband or TCG orders that were provisioned to end user
12 customers?

13 A You're referring now to the data in Exhibit 164?

14 Q I'm going to refer to what you looked at in your data
15 reconciliation records.

16 A The data reconciliation that we looked at, as I understood
17 it, was -- suffered the same limitation of the Liberty
18 data reconciliation. That is that the data were all for
19 what had been the TCG subsidiary that had been acquired by
20 AT&T.

21 Q So the data that you looked at for your testimony, none of
22 that was from the UNE-P trial, it was all truly commercial
23 performance?

24 A Well, almost by definition, the UNE-P trial would not have
25 dealt with unbundled loops. They weren't stand-alone

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1 loops. And we looked at local interconnection service
2 trunks. Those were the two services. So it's not the
3 UNE-P trial. It was the commercial data.

4 Q Thank you. You are familiar with the FCC's other 271
5 decisions in other jurisdictions?

6 A I've read parts of most of them. I won't claim to have
7 read all of all of them.

8 Q In terms of the statistical methods, pretty comfortable
9 with those?

10 A Pretty comfortable. I've read most of those, I think,
11 from one end to the other.

12 Q How about the Performance Assurance Plans?

13 A Probably sections of those that I have not read. If you
14 want to test me on that specific aspect, we can see.

15 Q Would Minnesota be unique if we were to require different
16 statistical methodologies for the Performance Assurance
17 Plan as compared to our evaluation for whether Qwest has
18 met the competitive checklist as part of 271?

19 A I'm pretty sure not. From what I can tell just in
20 reviewing, I think it's Exhibit 148, the statistical
21 standards for the Colorado plan seem to be not identical
22 to what is being used for the 271 checklist review. So I
23 don't think that that kind of template matching has
24 necessarily occurred.

25 Q In terms of other RBOCs that have received 271 relief,
0108

1 have you encountered that disparity between statistical
2 treatments?

3 A I'm trying to think if I know of any specifically. Off
4 the top of my head, I think that the way the penalties are
5 set up is generally a little different. As I discussed
6 before, all of the tests, for example, for penalties are
7 usually being applied to individual CLEC results for
8 individual months. And that's generally not the way the
9 statistical methodology is being applied in a 271 review.

10 So that difference, I think, would permeate
11 just about every 271 checklist review versus every
12 Performance Assurance Plan. That is that although it
13 might -- some of them might have the same confidence level
14 for both purposes, they wouldn't apply to the same subset
15 of data. They would never have applied it in the 271
16 example to individual company data.

17 Q To make sure I understand what you're saying is the
18 pass/fail standard may have been the same, but the
19 punishment, if you will, for the failure would be a
20 monetary remedy in the key path -- in a Performance
21 Assurance Plan, excuse me, and it would be a checklist
22 noncompliance in the 271?

23 A That's part of it, but I think what I was trying to say

24 inartfully was slightly different. That is that generally
25 in the 271 checklist review, you look at the collective

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1 data for all of the competitors for a particular checklist
2 item. You have the pooled data and not the data for the
3 individual competitors. So that was the distinction that
4 I was drawing.

5 Q The last area I have. In your discussion of the Bayesian
6 statistical methodology, you talked about how the
7 Commission should consider some of the information that it
8 has when it sets up its standards for evaluation of
9 Qwest's performance; is that fair?

10 A Yes.

11 Q One of the things that we may be faced with in the near
12 future is a Qwest 271 application that looks at data
13 reconciliation, that looks at statistical methodology that
14 may or may not be approved by the FCC?

15 A That's a possibility.

16 Q As the 13th or 14th state, or wherever we end up in the
17 queue, how would you have the Commission react to what I
18 guess you call the prior assumption that the FCC has
19 looked at Qwest's statistical methodology and said thumbs
20 up? The FCC has looked at the data reconciliation done by
21 Liberty and said Liberty did do an adequate job of data
22 reconciliation, how do we react to that as the 13th or
23 14th state?

24 A I suppose that really depends. The FCC makes each
25 decision in the context of the record before it in that

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1 jurisdiction. So if the FCC accepted Qwest's statistical
2 methodology, because I've never seen them actually adopt
3 someone's methodology as opposed to accept it, if they
4 accepted it in a state where the record didn't involve
5 contesting it with an alternative test, I don't suppose
6 that would really add anything to the a priori.

7 It's sort of like saying the Commission
8 didn't on its own -- the FCC didn't on its own initiative
9 apply a brand new statistical test. I can't imagine that
10 happening at that point in the process.

11 The data reconciliation, I suppose it would
12 be a slightly different question. That is you'd have to
13 look at what was specifically said on the record and the
14 decision that simply was that evidence presented that
15 there had been a data reconciliation or did the FCC sort

16 of affirmatively look at the data reconciliation in the
17 context of the contested record and say, oh, that's good.
18 It was a good job. We don't buy any of the complaints
19 about it.

20 I wish I were giving you more helpful
21 information, but it's hard to know without seeing a
22 decision how it would change the product.

23 Q I think that the parties are aware that our commissioners
24 in the QPAP have expressed a view or concern or an
25 observation that the 271 route is a path that previous FCC

0111

1 orders have sort of beaten a trail, and that as the 13th
2 or 14th state going through the request, you know, that's
3 a pretty worn down path and that it's hard for us to go
4 out of the path.

5 Is there something you can say to the
6 commissioners how they react to what I would characterize
7 your testimony as being, go outside the path that has been
8 developed in the other states when so many other states
9 may or may not have gotten through, other RBOCs and other
10 Qwest states?

11 A Sure. I guess I would say a couple of things. One is
12 sort of an obvious procedural one. You may not be
13 confronted with the point where you're making a
14 recommendation before other decisions have been rendered
15 now. We're actually in kind of a limbo in terms of the
16 interval.

17 But more importantly, as I responded to one
18 of your prior questions, the FCC has stated that the role
19 of a state recommendation is like the role of an expert
20 witness. And we all know from my resume, I was at the
21 California Commission for six years early on in my career.
22 One of the first things that happened to me is if you get
23 a chance to see the decision making process for a
24 commission confronted with expert witness testimony, I was
25 on the staff and was aware of a witness who tried to guess

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1 what the commission wanted the answer to be and modified
2 his testimony to provide that information. And then I
3 happened to be an advisor to one of the commissioners at
4 the time where the commission was deliberating on that
5 decision and heard firsthand the frustration that they had
6 a record that seemed to prejudice the answer because it
7 didn't provide them with alternatives.

8 I wasn't in a position to say, well, that
9 wasn't actually that staff witness's opinion. That
10 wouldn't have been proper. But I took from that, as an
11 expert witness, that it's not my job to second guess what
12 the decision maker wants to hear. It's my job to present
13 my opinion based on the evidence that I've reviewed. And
14 what I think I would tell the Minnesota Commission is the
15 Commission's role with respect to the FCC 271 process,
16 because the FCC is going to take a very short time and not
17 go through all this record, the Commission's role is to
18 act like that expert witness saying, looking at all the
19 evidence we've considered, here is what we think is the
20 best recommendation. You can do with it what you will,
21 including doing what past commissions have.

22 So it might be a little frustrating, but
23 that's where I would put it. That the Commission's job is
24 not to guess what the FCC wants, but to tell the FCC what
25 the Minnesota Commission thinks is in the best interest of

0113

1 the citizens of the state of Minnesota and the FCC will
2 decide what to do with that information.

3 Q Mr. Steese asked you -- and I correct myself, I do have
4 one more area -- Mr. Steese was asking you some questions
5 about what I would harken back to your original
6 conversation where you're looking at the context after you
7 see the red flags. And it seemed that when you look at
8 the context that Mr. Steese presented to you in terms of
9 retail repair situations, you were saying that the context
10 should show that this is a red flag that we would put back
11 in our pocket, if you will; is that correct?

12 A For those very specific measures that Mr. Steese walked me
13 through, I would agree. That when you're talking about
14 one or two failures in a small pool of CLEC data, I would
15 not use that alone as a reason to say that there is a
16 competitively significant problem.

17 Q And in terms of the purpose of the statistical methodology
18 that Qwest has advocated and countered the statistical
19 method that you've offered, the purpose of both of these
20 is to develop an objective method of pass/fail, if you
21 will, is that fair?

22 A Yes and no. It's -- the purpose is to, I think, develop
23 an objective method of flagging the data that somebody
24 should look at to say that a problem might exist here.
25 And so -- and the difference between them is that Qwest's

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1 method has a different standard for how often it would be
2 willing to raise a flag as I think you put it.

3 Q And when we get to the context by definition, we enter
4 into the subjective, that is there's not a decision rule
5 that you or Qwest have proposed that allows us to say put
6 the flag back in the pocket or say Qwest is not compliant
7 with this checklist?

8 A Unfortunately, that is true. You can only get so far with
9 a rigid statistical rule, and that's why the Commission
10 exists as the expert trier of fact.

11 MR. SMITH: Thank you.

12 JUDGE LUIS: All right. Let's go off the
13 record for lunch just until 1:30. Off the record.

14 (At this time a lunch recess was taken from
15 12:40 p.m. to 1:30 p.m.)

16 JUDGE LUIS: All right. Ms. Zeller, in order
17 to be consistent -- we're on to you now for redirect. Are
18 there any questions for any other parties upon what
19 Mr. Smith raised?

20 Ms. Zeller, in order to be consistent with
21 the way I decided to handle the response by way of offer
22 of proof to Qwest Exhibit 145 by allowing you to ask
23 questions, I decided that I will allow you to fill out
24 your offer of proof by asking Ms. Murray the questions you
25 were going to ask. And it may be no longer than what you

0115

1 already gave as your offer of proof, but you can get that
2 from her on Qwest Exhibit 151. And then I'll take it into
3 consideration as an offer of proof in accordance with what
4 I earlier said about all this. So if you can do that, go
5 ahead and do it.

6 MS. ZELLER: I will, just one moment, please,
7 Your Honor.

8 JUDGE LUIS: Yes. And then of course
9 whatever redirect you have, further redirect.

10 FURTHER REDIRECT EXAMINATION

11 BY MS. ZELLER:

12 Q Thank you. Ms. Murray, does the performance shown in
13 Exhibit 151 necessarily constitute outstanding
14 performance?

15 A My answer to that would be no for some of the reasons that
16 I got into in other questioning, I believe, from
17 Mr. Steese on a different topic. When you're talking

18 about instances, and I think here we were talking about
19 MR-8, the trouble rate, for example, where there is an
20 expectation of extremely high performance on both the part
21 of the retail and wholesale performance, then I think you
22 have to look behind that. And the way that I would
23 explain it would be by looking at the data that go behind
24 the blue chart, which I think are in Exhibit 10. And when
25 you look -- I won't go back to the exact page, I think

0116

1 that could be pointed to on the brief, but when you look
2 at the data for MR-8 for the trouble rate, even at times
3 when they are very small differences as noted in
4 Exhibit 151, you have, as Mr. Williams acknowledged,
5 instances in which, for example, Qwest has half or fewer
6 the number of troubles in over 100,000, say, retail
7 accounts as the CLEC has, and I think this occurred in --
8 or CLECs plural, have with a third of those accounts.
9 And that can be competitively significant in
10 a number of respects. First, I gave the example before of
11 the high expectation of Internet service provision. But
12 as I think some of the jocular conversation before the
13 hearing began about things heard on a bus. When you're
14 talking about every month CLECs having maybe 200 troubles
15 where troubles are virtually unheard of on the retail
16 side. When you're getting started in a market, word of
17 mouth is critically important to people's perceptions.
18 And if you hear from the handful of other people you know
19 who have started using service from a new carrier that,
20 boy, you know, I never had any trouble in my life with
21 Qwest, I switched over and the first I thing I know, we
22 had a trouble report with three lines when we had never
23 had any troubles at all.

24 And you hear that and that spreads and it
25 doesn't spread in the context of saying, well, that was a

0117

1 trouble rate of 98.6 percent on all CLEC accounts. That
2 absolute number of troubles being higher than the absolute
3 number of troubles (sic) and being not just one or two as
4 we were talking about before in the other instance, but
5 hundreds every month, that can be competitively
6 significant. That can really damage a new carrier's
7 reputation in the market. And that is why I am concerned
8 that just saying, oh, it's outstanding performance because
9 it's close to 100 percent isn't enough of an explanation.

10 MS. ZELLER: Thank you. That constitutes the
11 questions and answers I would offer as an offer of proof,
12 and I have no further redirect, Your Honor.

13 JUDGE LUIS: Okay. Mr. Steese, if there's
14 any cross from that, you can go ahead with this.

15 MR. STEESE: No cross from that. The
16 question I have, Your Honor, had this before and I have
17 forgotten, I'm assuming that as an offer of proof it's not
18 fit to be cited in the brief? It's just fit for Your
19 Honor to consider in the totality of the issues because
20 it's not a factual assertion in the record here?

21 JUDGE LUIS: That would be the case if the
22 testimony itself, right, but certainly any response --
23 they can respond to the evidence itself, 145 and 151, for
24 briefs.

25 MR. STEESE: Absolutely. I agree with that.

0118

1 JUDGE LUIS: But as far as citing this as a
2 place in the oral record, that's what you meant?

3 MR. STEESE: Correct.

4 JUDGE LUIS: You'd be correct about that,
5 unless I end up admitting it before the briefs.

6 MR. STEESE: Fair enough, I understand.

7 JUDGE LUIS: In which you'll be informed
8 about that.

9 MR. STEESE: Okay.

10 JUDGE LUIS: You may get informed about that
11 one way or another relatively soon.

12 Now, I guess what I'm going to be analyzing
13 is whether or not this really fits into the exclusion that
14 was put up about new issues or what was stated in the
15 prehearing orders about whether or not this is testimony
16 about a new issue and whether or not just simply
17 procedurally a response to matters that was raised and
18 exhibits that were introduced through the testimony of an
19 earlier opposing witness cannot be commented upon by
20 subsequent opposing witness, just as a matter of ordinary
21 procedure.

22 And if that wasn't even covered in the
23 prehearing ordered and something that wasn't mentioned,
24 it's something that would be normal trial procedure to
25 just respond to whatever evidence was raised and to

0119

1 respond to testimony. It seems to me that that may be the

2 way this should have been treated and thus I'll have a --
3 you know, be able to tell you about that, whether or not
4 what has now been couched as an offer of proof should, in
5 fact, be testimony that's admissible and would be part of
6 the record.

7 Now, if -- I believe if that's the case, then
8 rather than be consistent with what you said I should
9 have -- or you put forth your argument which is a
10 perfectly proper argument to say, well, you ruled a
11 different way earlier so you should be consistent, I think
12 what wins there is being correct over being inconsistent.
13 I'll take my chances with being inconsistent. I don't
14 want to be incorrect twice. So that's why I covered this
15 with this offer of proof as thoroughly as it was done.

16 And I will review the record earlier and if
17 anything was improper there about -- I think one of the
18 points you made was about allowing you to make your offer
19 of proof and state what the evidence would have been and
20 not allow you to go into a Q and A with the witness, and
21 that was one of the things. And whether or not that's
22 sufficient. I'm thinking generally an offer of proof
23 either way can probably be sufficient and there's also, I
24 think I stated at the time, that if it's -- if it would be
25 the subject of proper rebuttal testimony, you could offer

0120

1 the witness as a rebuttal witness later on in the
2 proceeding and also comment on it in your briefs.

3 So there were various alleys and
4 opportunities there that are afforded to the parties in
5 this proceeding to get their response in for consideration
6 such that the due process concerns are cured.

7 So I'll be looking at that. And if I did err
8 earlier, that will be acknowledged and whatever can be
9 done by way of corrective action appropriately will be
10 done or if it can't be cured, it can't be cured at that
11 point. So that that's kind of the way I'm going to be
12 looking at these couple of three junctures we've had like
13 this in this trial. But this one I wanted to take care of
14 and cover as thoroughly as possible as long as this
15 subject matter was fresh in my mind.

16 Fine. No further questions?

17 MS. ZELLER: No, Your Honor.

18 JUDGE LUIS: All right. Is there any other
19 questioning from anyone? All right. Ms. Murray, thank

20 you for your patience and cooperation with this proceeding
21 and you may step down. Off the record.

22 (At this time a discussion was held off the
23 record.)

24 JUDGE LUIS: All right. You may call your
25 witness, Mr. Witcher.

0121

1 MR. WITCHER: AT&T calls John Finnegan.

2 JUDGE LUIS: State your name and spell it,
3 please.

4 THE WITNESS: My name is John Finnegan,
5 F-i-n-n-e-g-a-n.

6 JUDGE LUIS: All right. Before we proceed,
7 today, please raise your right hand.

8 JOHN F. FINNEGAN,

9 after having been first duly sworn, was
10 examined and testified on his oath as follows:

11 JUDGE LUIS: Thank you, Mr. Finnegan. You've
12 been present for sometime during this proceeding, so I
13 won't repeat myself as to delivery of testimony by
14 witnesses. I trust you will keep those in mind and you
15 may proceed with this witness, Mr. Witcher.

16 (Whereupon AT&T Exhibit 165-169 were marked
17 for identification by the court reporter.)

18 DIRECT EXAMINATION

19 BY MR. WITCHER:

20 Q Good afternoon, Mr. Finnegan. Would you state your
21 address and occupation for the record, please?

22 A My address is 1875 Lawrence Street, Denver, Colorado
23 80202. And my occupation is I am a senior policy witness
24 with AT&T.

25 Q Mr. Finnegan, before you on the dais there should be five

0122

1 exhibits, Exhibit 165, 166, 167, 168, and 169. I'll go
2 over those individually. I just want to make sure you
3 have them all there.

4 A Yes, they're all here.

5 Q Okay. Exhibit 165 is the affidavit of John Finnegan
6 regarding Minnesota UNE-P test on behalf of AT&T. It is
7 dated June 10, 2002. The particular version you have is
8 the second errata, which was filed on September 5. Do you
9 see that document?

10 A Yes, I do.

11 Q Exhibit 166 is the surreply affidavit of John Finnegan

12 regarding OSS and billing issues on behalf of AT&T dated
13 August 23, 2002. That's the public trade secret redacted
14 version?

15 A That's correct.

16 Q Exhibit 167 is the surreply affidavit of John Finnegan
17 regarding OSS and billing issues on behalf of AT&T, again
18 dated August 23, 2002. That's the trade secret version of
19 the same document?

20 A That's correct.

21 Q Exhibit 168 is the Liberty audit of OP-17 and MR-11
22 performance measures with John Finnegan's written comments
23 and opinion, do you see that? Is that correct?

24 A Yes, that's correct.

25 Q And Exhibit 169 is the supplement surreply affidavit of
0123

1 John F. Finnegan regarding Qwest's proposed PO-20
2 measurement on behalf of AT&T, dated September 9, 2002?

3 A Yes, that is correct.

4 Q Do you have any change to those documents?

5 A Yes, I have one change to Exhibit 166. This would be on
6 page 17.

7 Q And what would the change be?

8 A The change would be in footnote 38, there is a reference
9 to Exhibit JFF-SURR-OSS-11C, where it refers to the
10 performance measurement OP-4C. It references a page
11 number at the very end of that footnote. It says page 23
12 of 77. It should be page 24 of 77.

13 And accompanying with that in
14 Exhibit JFF-SURR-OSS-11C, the exhibit itself, the wrong
15 page was inadvertently attached. That exhibit actually
16 shows results for OP-4A, installation interval average
17 days, dispatches within MSAs dated June 24, 2002. And it
18 should be OP-4C installation interval average days for
19 June 24, 2002. I have a copy of that document, but I
20 don't have sufficient copies for the Court.

21 MR. WITCHER: Your Honor, I haven't had a
22 chance -- we just figured this out just this morning. I
23 haven't had a chance to talk with Qwest counsel how to
24 deal with this. My proposal would be -- I think Qwest has
25 the information. It's a matter of just making sure the

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1 record copy is the appropriate page is inserted. What I
2 would propose to do at the conclusion of the day or as
3 soon as we're able to obtain copies, I think Mr. Finnegan

4 that needs to be in pink? Does that need to be a pink
5 copy?

6 THE WITNESS: Correct.

7 JUDGE LUIS: By that you mean inserting 24
8 instead of 23?

9 MR. WITCHER: Yes, sir.

10 MR. CRAIN: We have no objection to that
11 process is as long as you can actually -- I appreciate you
12 giving me or sending me a copy.

13 MR. WITCHER: We can certainly do that.

14 JUDGE LUIS: That's all right with me as
15 well. Now, where you made the -- let me get this
16 straight. There's just a change of the reference from 23
17 to 24, and that's where you cited it on page 17 at the
18 bottom, footnote 38 in 166. And have you, in fact, made
19 that in the record copy?

20 THE WITNESS: No, I have not.

21 JUDGE LUIS: Please go ahead and do that --
22 or draw a line towards it and then indicate at the other
23 end of the line today's date, 10/3/02, and then your
24 initials, please. Thank you.

25 THE WITNESS: I believe that would also

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1 apply, same change, to Exhibit 167, which is the nonpublic
2 document.

3 JUDGE LUIS: Yes, go ahead and make the same
4 change with the same dating and initial. And then you
5 require a substitution in each of them of 24 to 23; is
6 that correct?

7 THE WITNESS: That's correct.

8 JUDGE LUIS: Page numbers as indicated at
9 JFF -- I'm sorry.

10 THE WITNESS: JFF.

11 JUDGE LUIS: JFF-OSS-11.

12 THE WITNESS: Yes.

13 JUDGE LUIS: And were there any clerical
14 changes to be made in either of those documents or is it
15 just simply a substitution?

16 THE WITNESS: It would be simply a
17 substitution in 167.

18 JUDGE LUIS: 167 only, that being the trade
19 secret version?

20 THE WITNESS: That's correct.

21 JUDGE LUIS: All right.

22 BY MR. WITCHER:

23 Q Any further changes?

24 A No.

25 Q If I were to ask you the same questions which are included
0126

1 within the testimony and ask you to provide the same
2 comments that are included within Exhibit 168 today, here
3 orally, would you provide those same responses and those
4 same comments here today?

5 A Yes.

6 Q And is that information true and correct to the best of
7 your knowledge?

8 A Yes.

9 MR. WITCHER: Your Honor, I offer
10 Exhibits 165, 166, 167, 168, and 169.

11 JUDGE LUIS: Any objections?

12 MR. CRAIN: No objection.

13 JUDGE LUIS: All right. Exhibits 165 through
14 169, with the understanding that the substitution as
15 announced of the one exhibit page will be done. All of
16 those five are admitted to the record.

17 MR. WITCHER: And Your Honor, one other
18 matter. This is the matter which you may recall from long
19 ago, the first day of the hearing, this OP-17 Liberty
20 audit where there was discussion between AT&T counsel and
21 Qwest counsel -- some of whom are here, I was not -- but
22 as I understand it, in return for the permission for Qwest
23 to insert in this Bumgardner's testimony a Liberty audit
24 information, Mr. Finnegan was to be provided with, I
25 believe no more than ten minutes, is that the deal, to

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1 provide oral comments with respect, limited as I
2 understand it, with respect to the Liberty audit and would
3 ask that we would do that now and then tender him for
4 cross-examination.

5 MR. CRAIN: That's correct. And I believe it
6 would be limited to the matters related to those two
7 particular PIDs.

8 JUDGE LUIS: All right. Right. OP-17 and
9 MR-11?

10 MR. CRAIN: Yes.

11 JUDGE LUIS: Yes. And the Liberty audit
12 there being Exhibit 168. Yes, you may proceed with that
13 then, that commentary, oral commentary, Mr. Finnegan. Go

14 ahead.

15 THE WITNESS: When a facility-based CLEC,
16 i.e. one that provides its own switching equipment to
17 provide service from customers wins a customer from Qwest,
18 for the large majority of those customers, the customers
19 retains the same telephone number.

20 When the customer wishes to retain the same
21 telephone number, the CLEC must, amongst other activities,
22 send Qwest an order requesting the porting of the
23 customer's number to the CLEC. Once that customer's
24 number has been successfully ported to Qwest, Qwest
25 essentially turns off its previous customer service at the

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1 switch with a disconnect order.

2 If Qwest disconnects the customer service
3 before the CLEC has successfully ported the telephone
4 number, the customer has no telephone service. That's
5 obviously bad for the customer and not a good way to
6 impress your new customer.

7 With that context, that provides the primary
8 reason why the OP-17 measure and the MR-11 measure was
9 developed. The OP-17 measure tracks how well Qwest does
10 in not disconnecting the customer's service until the
11 proper time. The MR-11 measurement tracks, for those
12 instances where Qwest does prematurely disconnect the
13 customer's service, the percent of time Qwest can restore
14 service, depending upon the scenario, 4 hours or 24 hours.

15 AT&T's concern with the OP-17 and MR-11
16 performance results is that Qwest is using semantics to
17 underreport instances of premature disconnections.
18 Semantics that confuse the issue and appear to confuse
19 Liberty Consulting while it was auditing the OP-17 and
20 MR-11 measurements. The confusion results from Qwest's
21 use of the term "trouble report." The issue is,
22 essentially, when is a trouble report not a trouble report
23 and when is a trouble report a trouble report.

24 I've been involved in the PID development
25 discussions since they started, and a trouble report has

0129

1 always meant that a CLEC is contacting Qwest to inform
2 Qwest of a problem with a feature, service, or facility
3 that it obtains from Qwest.

4 Recently we found that in some situations if
5 Qwest corrects a problem through a service order, it's not

6 a trouble report. This applies to the OP-5 measurement
7 and most of the maintenance and repair measurements.
8 We've also found that Qwest captures some problems that
9 are reported by a CLEC not as a trouble report, but as an
10 escalation ticket or a call center ticket. And that's
11 where we're concerned. Are the call center tickets and
12 the escalation tickets being properly recorded as a miss
13 for the purposes of OP-17.

14 Qwest's response to the underreporting
15 concern has been to assert there is nothing to worry
16 about, Qwest is counting everything that they're supposed
17 to count. However, the evidence shows that may not be the
18 case.

19 For OP-17, Qwest's documented process that
20 was shown in Exhibit 17 required escalation tickets to be
21 opened for instances of premature disconnection. Liberty
22 stated, and this causes some of the concern that perhaps
23 Qwest is not properly capturing this, specifically Qwest
24 now captures data for and includes in the measure those
25 situations in which a disconnect in error is resolved via

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1 a call to Qwest's escalation call center. As noted above
2 previously, Qwest only included cases in which the trouble
3 desk opened a trouble report upon customer request.

4 Qwest says that escalation tickets are
5 counted as misses for OP-17. However, Mr. Stright of
6 Liberty Consulting had testified that prior to June 20,
7 they were not. No equivocation. Not only that,
8 Mr. Stright testified that he was not even sure if Liberty
9 examined escalation tickets as part of its audit
10 activities.

11 Liberty's OP-17 and MR-11 audit report also
12 stated that for orders in which AT&T believed that Qwest
13 had prematurely disconnected the service, and I'm quoting,
14 in another 60 percent of the cases, the order had been
15 disconnected in error, but there was no record that AT&T
16 had notified Qwest of the disconnection in error which is
17 required under the PID. Could that have been because
18 Liberty did not review escalation tickets or Qwest did not
19 provide escalation tickets for Liberty to audit while they
20 were doing the OP-17 and MR-11? We don't know. And from
21 Mr. Stright's testimony, we're still not sure.

22 In discussing other orders for which AT&T
23 believed that Qwest prematurely disconnected customer

24 service, Liberty also stated, and I'm quoting again, for
25 another 20 percent of the cases, the order had been

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1 disconnected in error, but the trouble ticket had not been
2 identified as a work back and therefore was not eligible
3 for inclusion in OP-17 results, unquote.

4 Why in this case did Liberty find the trouble
5 ticket when Qwest process says it should be an escalation
6 ticket that's opened in those situations?

7 AT&T's position on performance results has
8 been that we'll jointly develop a good PID, have Qwest
9 processes for producing the PID results thoroughly audited
10 by a third-party auditor, and if Qwest's results are
11 determined to be reliable, then Qwest performance results
12 should be relied upon to make the decisions and have the
13 Commission make the decisions as to whether Qwest's
14 performance meets the checklist requirements with respect
15 to 271.

16 Notwithstanding the issues of human error
17 affecting the accuracy and reliability of the performance
18 results that KPMG raised in test criteria 12-11-4, and
19 14-1-44, Liberty's audit was not enough and not thorough
20 enough to conclude the OP-17 and MR-11 results were
21 accurate and reliable. Liberty found that prior to
22 June 20 Qwest was not counting escalation tickets as
23 misses for trouble reports. Unfortunately, Liberty failed
24 to connect the dots and recognize that Qwest's failure to
25 count escalation tickets as misses in the OP-17 results

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1 was a violation of the PID requirements and should have
2 been so duly noted.

3 In conclusion, because Liberty, for whatever
4 reason, didn't understand Qwest's process and perhaps
5 didn't understand some of the subtleties of an escalation
6 ticket versus a trouble report, the accuracy and
7 reliability of Qwest's OP-17 and MR-11 performance results
8 are suspect and should not be relied upon by the
9 Commission in making any decisions related to the number
10 portability checklist item, which I believe is number 11.
11 And that concludes my comments, hopefully under the
12 ten-minute mark.

13 JUDGE LUIS: Yes. In fact, you only used
14 half your time, which I assume you'll need, Mr. Crain.

15 MR. WITCHER: Tender the witness, Your Honor.

16 JUDGE LUIS: All right. Thank you very much,
17 Counsel. And yes, I assume there may be other ways one
18 can amuse themselves with five minutes, but we'll proceed
19 with Mr. Crain.

20 MR. CRAIN: We'll see if I can amuse you for
21 that time.

22 CROSS-EXAMINATION

23 BY MR. CRAIN:

24 Q Let's turn first to the results of the AT&T UNE-P trial.
25 Can you turn to Exhibits JFF-UNE-P-2 and JFF-UNE-P-3?

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1 A That's in Exhibit 165?

2 Q Yes.

3 A Is there any preference to which one I should turn to?

4 Q Let's start with JFF-UNE-P-2?

5 A Okay, I'm there.

6 Q Can you explain what this document is?

7 A This document was for the second phase of AT&T's UNE-P
8 test in Minnesota. The performance results that AT&T had
9 collected and analyzed and reported on Qwest performance.

10 Q These are the -- the measures here that are reported as
11 QPID and then it goes on to state what the measuring
12 number is, are those the measures that were
13 collaboratively established in the ROC?

14 A Sort of. Those were AT&T's attempt to replicate, as much
15 as possible, what the ROC performance measures were.

16 Q Okay. And then what is -- what are those measures that
17 start with AT&T?

18 A The measures that start with AT&T were measures that our
19 consumer business unit considered important in providing
20 service, creating orders, having services provisioned with
21 the UNE-P product.

22 Q And those are designed and established by AT&T?

23 A Yes.

24 Q And the standard that is listed there, was that standard
25 designed and established by AT&T?

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1 A For the AT&T designated measures, those were identified by
2 AT&T. For the Q identified measures, those were the ROC
3 measures. Or ROC standards I should say.

4 Q Okay. Let's turn then to one AT&T established standard.
5 If you could turn to JFF-UNE-P-3 to the third page. About
6 the middle of the page there there's a measure
7 AT&T-MN-PR-7. Can you explain what that measure is?

8 A That measure is the percent orders provisioned accurately.
9 And what that means is for -- once we receive a service
10 order confirmation from Qwest, our folks involved with the
11 test would make some test calls from the line to ensure
12 that what was ordered was actually what was installed.
13 Q Would that include things like features and number of
14 lines and, basically, everything about that particular
15 order?
16 A It would include most things. Some of the orders were
17 direct relisting changes, and that was not something we
18 would be able to readily identify.
19 Q But it would include most things, and it includes as many
20 things that AT&T could determine with that kind of
21 testing; is that correct?
22 A It -- I don't know if I would say it was as much as we
23 could determine. We would try and verify that the
24 features and services ordered were the features and
25 services installed. So if we ordered three-way calling,
0135
1 we would do a three-way calling.
2 Q And if anything wasn't on that line and wasn't installed
3 properly, that was deducted from the numerator of this
4 measure; isn't that correct?
5 A That's correct.
6 Q There's a feature missing, et cetera?
7 A Yes.
8 Q So if there's a feature missing as a result of a manual
9 processing error, that would be like the three-way calling
10 you just mentioned, that would be captured in this
11 measure, wouldn't it?
12 A Unless we missed it in testing, it would be.
13 Q But this is your attempt -- and this is the test you
14 designed to be able to determine that; is that correct?
15 A That's correct. And we did have some humans performing
16 the test and they could have missed something or miscoded
17 something, but it was our attempt to identify provisioning
18 accuracy.
19 Q And what is the standard that was established by AT&T for
20 this measure?
21 A Greater than 95 percent.
22 Q And on Exhibit JFF-UNE-P-3, this is for phase 1 of the
23 testing, can you tell me what the result is for the
24 performance of Qwest?
25 A The result is 97.81 percent.

0136

1 Q Moving then to JFF-UNE-P-2, if you could turn to the third
2 page of that and look at the same measure, this is the
3 document that shows the results of phase 2 of the testing.
4 Can you tell me how Qwest performed on that measure in
5 phase 2 of the testing?

6 A 99.49 percent.

7 Q And that's against AT&T's unilaterally established
8 95 percent benchmark?

9 A Yes.

10 Q And AT&T established that benchmark understanding that
11 some orders would be handled manually and some orders
12 would be flow through; isn't that correct?

13 A I did not establish the standard, so I'm not sure what
14 they considered. I do know from our testing folks'
15 perspective they had expected, based on their
16 interpretation of the Qwest business rules, that most, if
17 not all of the orders, would flow through. But with that
18 statement, I'm not sure if or whether they considered that
19 in the establishment of the standard.

20 Q Let's then look at the actual flow-through rates during
21 the testing. If you could turn to JFF-OSS-6C, which is an
22 exhibit to Exhibit 166. It should be a pink document.

23 A I think it's actually Exhibit 167.

24 Q Oh. Yes, you're correct, 167. I didn't realize it would
25 be the trade secret document, even though it's pink.

0137

1 A I have finally located it.

2 Q Let's first try to deal with whether or not we need to
3 bracket the remainder of this discussion. Does this
4 document show just test orders?

5 A That's my understanding, that it only includes test
6 orders.

7 Q Does AT&T consider this document confidential?
8 Whatever -- I'm only asking to make it easy for the
9 hearing if we want to bracket it and say it's trade secret
10 from here on out, I'm okay. I was trying to see if we can
11 avoid doing that.

12 A I don't think the discussion of the numbers is
13 confidential. The entirety of the AT&T performance
14 results would be confidential, but I don't think these
15 specific numbers would be confidential.

16 Q Okay. So to the extent we discuss the numbers, including
17 the enumerators and denominators here, we can avoid going

18 on a confidential record?

19 A Yes.

20 Q Okay. Phase 1 of the testing, I believe you testified in
21 your affidavit, concluded in mid-October; is that correct?

22 A Did you say phase 1?

23 Q Phase 1.

24 A Phase 1 concluded -- yes, in about mid-October.

25 Q And then there was some additional work that was required

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1 to establish and start up phase 2, and phase 2 then began
2 again in mid to late November?

3 A Yes, that's my recollection.

4 Q So the phase 1 would be captured in the first five months
5 here, June to October, and then phase 2 numbers would be
6 captured in the November and December results?

7 A That's a fair characterization.

8 Q Let's look first at phase 1, and I would like to do some
9 calculations here. I'm going to ask you to do some
10 calculations. I have a calculator for you.

11 A I didn't know there was going to be a quiz.

12 Q There's a math quiz here. Let's look at phase 1. Can you
13 add up those months and tell me what the total number of
14 orders are?

15 A The denominator you're talking about?

16 Q Yes.

17 JUDGE LUIS: Let me make sure, are we adding
18 the column that starts with 971 and ends with 671?

19 MR. CRAIN: We are adding the numbers that
20 begin with 971 and ending 562.

21 JUDGE LUIS: Oh, excuse me. That's how far
22 you're having him go?

23 MR. CRAIN: Yes.

24 JUDGE LUIS: All right. Thank you.

25 THE WITNESS: 4,243.

0139

1 BY MR. CRAIN:

2 Q Can you tell me how many of those were manually processed?

3 If you add up the -- well, let's first add up the CLEC
4 enumerator, then, for the first five months?

5 A Those would be the ones electronically processed.

6 Q Those would be electronically processed. Then we're going
7 to do something tricky and subtract.

8 A 1,215.

9 Q Can you then subtract 4,243 from the, what is it, 1,215?

10 A I can and I have and that result is 3,028.
11 JUDGE LUIS: Those factors are reversed of
12 course?
13 BY MR. CRAIN:
14 Q Yes, sorry. That's the 3,028 then is the number of orders
15 in phase 1 that were manually processed?
16 A Yes. If my math is correct.
17 Q Can you turn back, then, to the document we discussed
18 originally, which was JFF-UNE-P-3?
19 A Am I safe to put this document away?
20 Q No, we're going to go back to it. Nothing is ever safe.
21 A So I'm going back to exhibit --
22 Q JFF-UNE-P-3, the results from phase 1 of the testing.
23 A All right. I made it.
24 JUDGE LUIS: Go ahead.

25 BY MR. CRAIN:

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1 Q Isn't it correct that that shows that 2.19 percent of
2 orders were not provisioned accurately? It's actually
3 page 3, the result for AT&T-MPR-7.
4 A I won't go through the math, I'll accept your math.
5 Q That it would be 2.19 percent?
6 A Yes.
7 Q Can you multiply 3,028 by .0219?
8 A I can and I have and the result is 66.3.
9 Q So essentially 66 orders had -- I'm sorry, I asked the
10 wrong question.
11 JUDGE LUIS: All right. Let me just say the
12 2.19 comes from taking 100 percent minus the 97.81.
13 MR. CRAIN: Yes, it does.
14 JUDGE LUIS: And that appears there. And
15 what is it you're trying to do is get the percentage of
16 3,028.
17 MR. CRAIN: What I am trying to do is find
18 out the number of these total LSRs that had provisioning
19 errors. So I had you multiply the wrong number. Can you
20 multiply 4,243 times .0219.
21 JUDGE LUIS: Okay, I'm with you.
22 THE WITNESS: I can and I have and that
23 result is 92.92.
24 BY MR. CRAIN:
25 Q So 93 orders had provisioning errors in phase 1; is that
0141
1 correct?

2 A I'd have to review the PO-2 PID to see if the PO-2 PID
3 also included feature change orders. Many of our orders
4 we submitted were feature change only and would not be
5 considered an inward order. And I don't recall if inward
6 orders were counted as PO-2 orders.

7 Q With that, let's just go with this analysis for now. If
8 we were to find a number of manually processed orders or
9 the percentage -- if we were to assume that every single
10 one of these orders, these 92 orders -- 93 orders, were
11 manually process errors, let's figure out what percentage
12 are manually processed orders had errors. Can you divide
13 93 by 3,028?

14 A That result is 3.07 percent.

15 Q So in phase 1 of the testing, out of all the manually
16 handled orders -- in phase 1 of the testing, for manually
17 processed orders, they had a maximum error rate of
18 3.07 percent?

19 A As AT&T defined an error, yeah.

20 Q Okay. Let's look at phase 2 and do the same analysis
21 then. Can you tell me what the total number of orders are
22 shown for the months of November and December on
23 JFF-OSS-6?

24 A 1,597.

25 Q Can you then add up the enumerators for those two months?
0142

1 A 1,079.

2 Q Can you then subtract 1,597 from -- subtract from 1,597
3 the 1,079?

4 A 518.

5 Q Can you then turn to Exhibit JFF-UNE-P-2, which is the
6 results for phase 2 of the testing?

7 A Back to page 3?

8 Q Back to page 3.

9 A I'm there.

10 Q And does that show that the percent of orders provisioned
11 accurately was 99.49 percent?

12 A That's correct.

13 Q And then subtracting from 100, you would end up with .51
14 percent of orders had errors?

15 A That's correct.

16 Q Can you multiply, then, the 1,597 times .0051?

17 A That result is 8.14.

18 Q So we have 8 orders in phase 2 with provisioning errors.
19 Let's figure out -- let's assume that all of those, then,

20 are manual handling errors and figure out what percentage
21 of the 518 that is. So if you could divide 8 by 518?

22 A That is 1.54 percent.

23 Q So for phase 2 of the testing, out of 518 manually
24 processed orders, only 1.54 percent of those had errors?

25 A Operating under those assumptions, yes.

0143

1 Q Those two numbers, the 1.54 percent and the 3.07 percent,
2 even if you just look at the manually handled orders,
3 those are still within AT&T's unilaterally established
4 benchmark of less than 5 percent errors; isn't that
5 correct?

6 A Yes.

7 Q Those numbers, the 3,028 manually handled orders in the
8 phase 1 and the 518 in phase 2, are significantly higher
9 than the numbers of orders that -- strike that. That was
10 an inarticulate question. Let me figure out another way
11 to ask it.

12 If you could turn to page 7 of Exhibit
13 UNE-P-6, JFF-UNE-P-6 which is an exhibit to Exhibit 165,
14 turn to page 8.

15 A What exhibit did you say or what attachment?

16 Q It's Exhibit UNE-P-6. It's AT&T's comments on the final
17 report.

18 A And what page was that?

19 Q Page 8.

20 A Okay.

21 Q In the second full paragraph there you call KPMG timorous
22 for not reaching a conclusion based upon 76 orders that
23 showed some manual handling errors. Here don't we have a
24 much higher number of orders to look at, which is 3,028 in
25 phase 1 and 518 in phase 2, to reach a less timorous

0144

1 conclusion?

2 A That's certainly higher. However, KPMG was looking at a
3 broader scope of information in its review of the accuracy
4 of Qwest's provisioning than AT&T was.

5 Q This was a test established by AT&T and designed by AT&T
6 to look at and work on provisioning of UNE-P orders?

7 A It was. And the reason I made that previous statement was
8 we looked at it from the end of the process. KPMG had
9 access throughout the entire process and Qwest provided
10 information that went above and beyond some of the fields
11 we would have access to or the information we would have

12 access to.

13 So while the numbers are certainly larger,
14 the scope of activities or the scope of fields that KPMG
15 reviewed would be broader than what AT&T reviewed.

16 Q But AT&T was able to review things like feature
17 availability and whether or not you got what you ordered?

18 A Yeah. Other things like what application date Qwest
19 assigned or the directory listing information or the
20 billing information or the other such information, we
21 would not have been able to review.

22 Q But with full understanding of the limited nature and
23 number of fields you were able to review and results you
24 were able to review, AT&T unilaterally established a
25 5 percent benchmark; isn't that correct?

0145

1 A Yeah.

2 Q And Qwest performed well within that 5 percent benchmark;
3 isn't that correct?

4 A Yes.

5 Q Let's move on, then, to the measures that are shown in
6 red -- actually in my copy they appear to be a darker
7 gray -- on JFF-UNE-P-2 and 3, if you could turn back to
8 those documents?

9 A Okay. I'm back there and, unfortunately, I have the black
10 and white version.

11 Q So do I. So that's what I meant by saying there appear to
12 be a darker gray. The ones that are in the darkest color
13 are ones that if you look at the key in the top -- upper
14 left-hand corner, AT&T has designated as not meeting
15 performance standard.

16 A Yes, I'm synced up with you.

17 Q Okay. Let's move to the first one of those on JFF-UNE-P-2
18 which is QPID PO-3B-2. It's on page 1 of JFF-UNE-P-2.
19 The LSR.

20 A Yes, I've located it. I was on the wrong exhibit.

21 Q This is AT&T's attempt to capture this PID; isn't that
22 correct?

23 A Yeah.

24 Q How did AT&T determine which reject notices were returned
25 mechanically versus which reject notices it received were

0146

1 actually sent by human at Qwest?

2 A I don't know for sure. I believe it was indicated as such
3 on the notice itself, but I'm not 100 percent sure.

4 Q You don't know one way or another how it was done?

5 A No.

6 Q Okay.

7 JUDGE LUIS: Mr. Crain, I'm sorry, I'm having
8 trouble going back and forth here. Are we on --

9 MR. CRAIN: We are on Exhibit 165,
10 Exhibit JFF-UNE-P-2.

11 JUDGE LUIS: Continue with the witness.

12 BY MR. CRAIN:

13 Q Moving back down a couple of lines to Q-PID-PO-4B-2 --
14 actually, I would actually ask you to move down one line
15 from there Q-PID-PO-5A-2. This is firm order
16 confirmations on time flow through?

17 A That's correct.

18 Q And you show Qwest not meeting this PID; is that correct?

19 A That's correct.

20 Q With a 63.84 percent?

21 A That's correct.

22 Q The measure underneath that, Q-PID-PO-5B-2, is firm order
23 confirmations on time nonflow through; isn't that correct?

24 A That is correct.

25 Q You're showing no observations in that measure results.

0147

1 Considering that in phase 1 we're showing almost
2 three-quarters of the orders were not flow through, how
3 can you have no results in this measure?

4 A The way we did this measure was based on our
5 interpretation of the business rules for what should flow
6 through and what should not flow through. It was our
7 determination that they all should be flow-through
8 eligible.

9 So this was perhaps not quite the PO-5
10 measurement, but it was, for those we had expected to flow
11 through, did we get the FOC within 20 minutes. And the
12 results here show we only did 63.84 percent of the time.

13 Q So despite the fact that three-quarters of the orders were
14 actually manually handled, you still got 63 percent of
15 those orders FOCs returned within 20 minutes?

16 A Well, the problem as was discussed back and forth in some
17 of the comments and affidavits was we have no way of
18 knowing -- or have no reasonable way or expeditious way of
19 knowing whether the order flowed through or not. Once we
20 sent it to Qwest it was gone.

21 So we based our expectations on our

22 interpretation of the business rules, and our
23 interpretation of the business rules was that all of the
24 orders should flow through. And based on that
25 interpretation, we established an expectation that they

0148

1 should flow through and we should receive a FOC within 20
2 business minutes.

3 Q But isn't it true that the actual PID that was negotiated
4 between our parties, between Qwest, AT&T and other CLECs,
5 applies only to orders that actually do flow through?

6 A Yes, it does. And that's why I caveated it by saying this
7 may not be a perfect replication of the PO-5 measurement.

8 Q And the benchmark that was established is the same as the
9 benchmark you show here which is 95 percent within 20
10 business minutes; isn't that correct?

11 A That's correct.

12 Q And that applies, in the PID and pursuant to the agreement
13 of the parties, only to orders that actually flowed
14 through; isn't that correct?

15 A That's correct.

16 JUDGE LUIS: Just a clarification, was that
17 last line of questioning with reference to JFF-UNE-P-3?

18 MR. CRAIN: That's JFF-UNE-P-2.

19 JUDGE LUIS: 2, all right.

20 MR. CRAIN: The same discussion would apply
21 to JFF-UNE-P-3 as well.

22 JUDGE LUIS: All right, thank you.

23 BY MR. CRAIN:

24 Q Turning to the next page of JFF-UNE-P-2, you show
25 AT&T-MN-OR-6 as not being met. That's flow through order

0149

1 confirmations notice interval. The same issue apply to
2 this measure and the measure below that, OR-7, which is
3 despite the fact that quite a few of those orders did not
4 flow through, you assumed that every single one of them
5 did?

6 A Yes. It was our understanding that the orders we sent met
7 the eligibility criteria for flow through orders.

8 Q And this is a unilaterally established benchmark
9 established by AT&T?

10 A It should not have been -- oh, yes, yes, it was. I'm
11 sorry. Yes, this was unilaterally established by AT&T.

12 Q And the parties, when we negotiated the PIDs, actually
13 negotiated the benchmark to be what is shown on the page

14 before that, which is 95 percent within 20 minutes, rather
15 than an average of 20 minutes; isn't that correct?

16 A That's correct.

17 Q Moving on towards the AT&T-MN-OR-4 and 5, that's order
18 confirmation or rejection response completeness and order
19 confirmation or rejection response duplication. Those two
20 measures were designed and established by AT&T; isn't that
21 correct?

22 A That's correct.

23 Q And that's an AT&T unilaterally established benchmark of
24 100 percent for the first and 0 percent for the second?

25 A That's correct.

0150

1 Q AT&T expects perfection of these two measures?

2 A Yes.

3 Q What's the actual performance by Qwest on those two
4 measures?

5 A On than AT&T-MN-OR-4, the result was 99.60 percent. On
6 AT&T-MN-OR-5, the result was 0.20 percent.

7 Q So despite the fact that Qwest performed at more than a
8 99.5 percent rate on the first measure and had only .2
9 percent failure on the second measure, you consider Qwest
10 to have missed those two benchmarks?

11 A Yes. These are from an ordering or interface perspective
12 relatively fundamental transactions. When we send an
13 order in, if we don't get either a firm order confirmation
14 or a rejection notice back to us, it indicates that Qwest
15 has lost the order. And we have to go through some
16 investigation to determine what the -- where the order
17 went to and why we didn't get one of those notices or the
18 other back.

19 It causes disruption to our process. It
20 should be a relatively simple transaction to complete and
21 that's why we expect, for every order we send, we're going
22 to get a response back with either a firm order
23 confirmation or an order rejection.

24 Q Do you have a copy of Exhibit 108 with you, the final
25 report?

0151

1 A Yes.

2 Q Will you turn to page 80?

3 MR. CRAIN: And I believe in Your Honor's
4 copy that would be page 80 as well.

5 JUDGE LUIS: Go ahead.

6 BY MR. CRAIN:

7 Q If you look at the results for 12-5-4, this is KPMG's
8 analysis of the same issue; isn't that correct?

9 A Yes.

10 Q And KPMG, using its professional judgment, established a
11 95 percent rather than a perfection benchmark here; isn't
12 that correct?

13 A That's correct. Every time KPMG applied a standard, it
14 was 95 percent.

15 Q And based upon Qwest's performance of 99.3 percent, Qwest
16 was found to have satisfied that criteria; isn't that
17 correct?

18 A Yes, although I was reading footnote 27, page 80, nonflow
19 through resale and UNE-P orders submitted prior to the
20 resolution of observation 3001 were excluded from the
21 calculation. And I had not recently reviewed observation
22 3001 and I don't know what impact that would have on the
23 results or why KPMG would have excluded those.

24 Q Turning back to JFF-UNE-P-2, which is an attachment to
25 Exhibit 165, and if you turn to page 2 of that?

0152

1 A I'm there.

2 Q For the results for AT&T-MN-OR-4, Qwest's performance of
3 99.60 percent for the AT&T UNE-P trial meets and exceeds
4 considerably taking KPMG's 95 percent benchmark; isn't
5 that correct?

6 A It meets it, yes.

7 JUDGE LUIS: Excuse me.

8 THE WITNESS: It appears the copier redacted
9 it.

10 JUDGE LUIS: I've been looking for a while, I
11 assumed it was there. I assumed it might have come out
12 darker than -- I will state this for the record that the
13 bench copy is copied darker than the record copy. The
14 record copy is legible as 99.6, which we will have for our
15 review.

16 MR. CATTANACH: We'll try to get a better
17 bench copy.

18 JUDGE LUIS: You may proceed.

19 BY MR. CRAIN:

20 Q Turning again, then, to page 3 of that document, the two
21 measures shown in red there are AT&T-MN-PR-3-1 and
22 AT&T-MN-PR-4; isn't that correct?

23 A Those two are. There's also a third one on the top of the

24 page.

25 Q What is the third one on the top of the page?

0153

1 A We may have a pagination problem but AT&T-MN-OR-5 shows up
2 in the darker color.

3 Q Oh, on yours as well? That showed up on the page before
4 on mine. Sorry.

5 Let's turn to AT&T-MN-PR-3-1 and PR-4. Once
6 again, you're showing a perfection benchmark here,
7 100 percent, for provision and completion notification and
8 zero percent for unbillable orders?

9 A Yes.

10 Q What is unbillable orders?

11 A The way our process works, we need to receive a provision
12 and completion notice as a signal that we can start
13 billing our customer. If we don't receive a provision and
14 completion notice, then from our perspective, we should
15 not start billing our customers, and that would be an
16 unbillable work.

17 Q So that's a provision and completion notification rather
18 than a billing completion notification?

19 A Yes.

20 Q If you could turn then to Exhibit 108 and the page 94 of
21 that exhibit?

22 A I'm on page 94.

23 Q And for the results for test criteria 12-10-1, that is the
24 same issue, which is service order completion received in
25 response to completed orders?

0154

1 A Yes, it is. However, on the record Exhibit 108 it shows
2 up on page 93.

3 Q Okay. And in the second paragraph of that response, AT&T
4 there established a 95 percent benchmark; isn't that
5 correct?

6 A I believe you meant KPMG.

7 Q KPMG.

8 A And they did establish a 95 percent benchmark.

9 Q And based upon Qwest's performance of 99.4 percent in that
10 test, Qwest passed that criteria?

11 A Yes.

12 Q If you turn, then, to JFF-UNE-P-3, which is the attachment
13 to Exhibit 165?

14 A Okay.

15 Q This is the results for phase 1 of the test, and I'd like

16 to sort of walk through these issues with you on that one
17 as well. The first one, first measure showing up in as
18 red in this test is AT&T-MN-OR-3; is that correct?

19 A That's correct.

20 Q And once again AT&T is establishing a perfection standard
21 there?

22 A That's correct. This is another one of these EDI
23 interface blocking and tackling type of measures. It just
24 says when we send an order in, we expect to receive an
25 acknowledgement back from Qwest that it received the

0155

1 order. We don't receive the acknowledgement, to us it
2 indicates that the order has been lost and we have to
3 investigate what happened to it.

4 Q And AT&T's -- or Qwest's performance in the AT&T test was
5 99.87 percent on that measure?

6 A That's correct.

7 JUDGE LUIS: And that is legible there on the
8 record copy?

9 THE WITNESS: It is.

10 JUDGE LUIS: All right. It's not on the
11 bench copy.

12 BY MR. CRAIN:

13 Q Turning back to Exhibit 108, the OSS test report. If you
14 could turn to page 80 of that report again. And look at
15 the results for test criteria 12-5-2. This is KPMG's
16 analysis of the same issue, the return of functional
17 acknowledgments; is that correct?

18 A That's correct.

19 Q And once again, rather than a perfection stand, KPMG
20 established a 95 percent standard; isn't that correct?

21 A That's correct.

22 Q And based upon its performance of 99.5 percent there,
23 Qwest passed that criteria?

24 A That's correct.

25 Q And based upon -- turning back then to Exhibit

0156

1 JFF-UNE-P-3, Qwest's performance in the AT&T test of
2 99.87 percent meets and exceeds KPMG's 95 percent
3 benchmark; isn't that correct?

4 A That's correct. If you assume KPMG applied some of the
5 same business rules with respect to the calculation as did
6 AT&T.

7 JUDGE LUIS: All right. Off the record for

8 five minutes.

9 (At this time a discussion was held off the
10 record from 2:55 p.m. to 3:05 p.m.)

11 JUDGE LUIS: Let's go back on the record.

12 All right, thank you. And I want to thank Mr. Cattanach
13 for supplying me with the numbers 3 and 2, I can't
14 remember the other numbers, that are legible and thank you
15 for that and I can read them when I look at them and I can
16 read the numbers then too. So continue now, Mr. Crain,
17 with the cross of the witness.

18 BY MR. CRAIN:

19 Q Sure. I believe we were talking about JFF-UNE-P-3, which
20 is the test results for phase 1. Turn to page 2 of that
21 document. Those first 2 or the first measure that shows
22 up in red is AT&T-MN-OR-6?

23 A That's correct.

24 Q And once again, that's covered by the same issue where
25 you're considering everything flow throw even though quite

0157

1 a few orders did not flow through; is that not correct?

2 A Yes.

3 Q Moving down to those other two measures that are marked in
4 red there, AT&T-MN-OR-5 and AT&T-MN-OR-4, for those AT&T
5 established unilaterally a perfection benchmark?

6 A Yes. And for the record, AT&T-MN-OR-4 is on page 2 and
7 AT&T-MN-OR-5 is on page 3.

8 Q So let's look at the one on page 2 then. The
9 AT&T-MN-OR-4, Qwest's performance of 99.90 on that is
10 higher than KPMG's established 95 percent benchmark; isn't
11 that correct?

12 A Yes.

13 Q Moving on then to page 4 of this document, and actually to
14 make this quicker, let's just move back to AT&T --
15 JFF-UNE-P-2, which is the results from phase 2 of the
16 testing. If you could turn to page 4 of that document.
17 For this document, the remaining measures here that are
18 shown in red all relate to DUF provisioning; isn't that
19 correct?

20 A That's correct.

21 Q And when did the AT&T UNE-P trial conclude?

22 A It concluded in December of 2001.

23 Q And I believe in your testimony you testified that AT&T's
24 results of DUF testing were consistent with the ROC
25 testing results at that time; is that correct?

0158

1 A That's correct.

2 Q Now, the ROC continued to test DUF issues; isn't that
3 correct?

4 A That's correct.

5 Q And Qwest eventually did pass the DUF test in the ROC;
6 isn't that correct?

7 A That's correct.

8 Q So for the more current and the later in time test, which
9 is the conclusion of the ROC test, Qwest actually did pass
10 DUF provisioning in the ROC test?

11 A Yes.

12 Q On pages 13 and 14 of your surreply affidavit, you
13 testified about issues you brought to the attention of the
14 ROC vendors. Is it correct that when you found it
15 appropriate and when you found it would be helpful, you
16 brought issues from the AT&T UNE-P trial to the attention
17 of the ROC vendors?

18 A I wouldn't characterize as that was a condition upon which
19 we brought it to the attention of the ROC vendors. If we
20 had noticed something in the UNE-P test that I did not
21 believe had been picked up or identified in the ROC test,
22 I would contact the test vendors and say we found
23 something, are you seeing anything like this.

24 I don't think it was an intent to be helpful
25 or not. It was just to show we found something that

0159

1 didn't appear that KPMG was, did you miss something or did
2 we miss something.

3 Q And how frequently or how often did you do that?

4 A That was not very often. I can't recall any other
5 contacts other than the ones I referenced in my surreply
6 affidavit.

7 JUDGE LUIS: Can you give me some examples of
8 who these vendors are that are referred to here?

9 THE WITNESS: Sure. The one vendor was KPMG
10 Consulting, who was the tester in the ROC OSS test. The
11 other vendor was the Maxim Telecom Group, or MTG, that
12 acted as the facilitator for the states for the ROC OSS
13 test?

14 JUDGE LUIS: Those are whom you mean?

15 THE WITNESS: Yes.

16 JUDGE LUIS: M-a-x-i-m?

17 THE WITNESS: Yes.

18 JUDGE LUIS: Thank you.

19 BY MR. CRAIN:

20 Q Now, you consider the ROC OSS test to be generally a very
21 good test?

22 A Yes, I consider it a very good test. There are some
23 things in retrospect I would have preferred to have been
24 done differently. But generally it was a good test.

25 Q And you got a handful of issues that you raised in your
0160

1 comments on the OSS test, which is JFF-UNE-P-6; isn't that
2 correct?

3 A There were, what we viewed as significant issues, that
4 were raised. Generally significant issues raised in the
5 comments on the ROC OSS file and report.

6 Q Let me go through a few of those. On pages 19, 20 and
7 onto 21 of that document, you spend over two -- about two
8 pages discussing the issue of Qwest's timely responses to
9 CLEC requests to modify trouble report?

10 A Yes.

11 Q And isn't it correct that in other hearings and
12 proceedings you testified that this issue is not a big
13 deal?

14 A I don't know if I use those exact words, but in the scheme
15 of things, this was not a significant issue.

16 JUDGE LUIS: Are we on 166?

17 MR. CRAIN: This is actually an exhibit to
18 Exhibit 165.

19 JUDGE LUIS: Oh, I'm sorry, okay.

20 MR. CRAIN: It's JFF-UNE-P-6.

21 JUDGE LUIS: Thank you, I see that. Thank
22 you, go ahead.

23 BY MR. CRAIN:

24 Q Then on pages 21 to 23, you talk about the issue of
25 deficiencies in Qwest's repair records. Again, here
0161

1 haven't you testified in other regions that this isn't a
2 big deal or a significant issue?

3 A Yes.

4 Q You referred in your testimony to -- and I'm sorry to keep
5 bouncing around from exhibit to exhibit -- can you turn
6 back to Exhibit 108, which is the final OSS test report.
7 If you could turn to page 191 of that report and look at
8 the results for 14-1-13. I have 191 but it may be 186 or
9 something.

10 A Which test cross-reference?

11 Q 14-1-13.

12 A It is page 187 on the record Exhibit AT&T 108.

13 Q Now, in your testimony you testified that KPMG found
14 issues with the timeliness for Qwest to update CSRs.
15 Isn't it correct that in this test criteria, KPMG found
16 that Qwest had satisfied the criteria for timeliness of
17 updating CSRs?

18 A This one was a little strange in how it came about. I
19 believe if you look at how this was raised, KPMG had an
20 expectation that was similar to what AT&T's was. And that
21 is when an order was complete and they receive a service
22 order completion notice, or a SOC, they would then go and
23 review the customer service record to ensure that the
24 ordered features had indeed been provisioned. What they
25 initially found was that wasn't occurring. Upon further

0162

1 analysis it turned out Qwest was taking three to five days
2 and as long as 30 days to update the CSR.

3 At that point, at that point my belief is
4 KPMG should have issued an exception pointing out the
5 excessive time it took to update a CSR. What they instead
6 did was measure Qwest's performance against Qwest's
7 unilaterally developed update interval of 3 to 5 and as
8 long as 30 days to update a CSR.

9 So for tested cross-reference 14-1-3, they
10 measured Qwest against Qwest's interval of 3 to 5 business
11 days and found that Qwest met the updating of the CSRs
12 within 3 to 5 business days over 95 percent of the time.
13 Just over 95 percent of the time.

14 Q And that's measured against the 3 to 5-day interval rather
15 than any 30-day interval; isn't that correct?

16 A That's correct.

17 Q And the exception you referred to, exception 3028, which
18 is attached as JFF-OSS-5 to Exhibit 186, that exception
19 actually was closed by KPMG and closed resolved; isn't
20 that correct?

21 JUDGE LUIS: Is it 166?

22 MR. CRAIN: 166, yes. I'm sorry, did you say
23 156?

24 JUDGE LUIS: You actually said 186.

25 MR. CRAIN: 166.

0163

1 THE WITNESS: Which exhibit in 166 was that?

2 BY MR. CRAIN:

3 Q OSS-4 -- no, OSS-5.

4 A Could you repeat the question?

5 Q The question was you refer to this as an exception related
6 to that issue, and the question was KPMG closed this
7 exception and closed it as resolved; isn't that correct?

8 A That's correct.

9 Q Finally -- another issue you raise in your testimony is
10 multiple FOCs. Can you turn to Exhibit 108 and to
11 page 80. Actually, not page 80. Hold on a second. Yes,
12 actually 80, which is the results of 12-5-4.

13 Again, you refer to this exception in your
14 testimony as HP finding occurrences of receiving multiple
15 FOCs and order acknowledgments and other issues that it
16 hadn't anticipated. Isn't it correct that those
17 exceptions that are referred to in this test criteria were
18 all closed by HP and KPMG and closed resolved?

19 A Yes.

20 Q And they were retested and HP and KPMG did not find those
21 problems to be reoccurring after the fixes were installed?

22 A Yes.

23 Q Finally, on the issue of billing, you testify on page 25
24 of your direct testimony that AT&T receives paper bills,
25 or it did receive paper bills, because the electronic BOS

0164

1 feed was not available. Isn't it correct that AT&T has
2 three options in terms of receiving electronic versions of
3 bills, one being ASCII, or A-S-C-I, the second being EDI,
4 and the third being BOS, B-O-S?

5 A I'm not intimately familiar with the options. I know
6 there is multiple ways to receive wholesale bills.
7 Subject to check, I'll accept your representation that
8 those are the three options.

9 Q But there are other electronic options other than the BOS
10 billing option; isn't that correct?

11 A From AT&T's perspective, none that are practical. Our
12 preferred method, the one we use with other BOCs is to
13 receive wholesale bills in the BOS format. To receive it
14 in the other formats is inconsistent with the way other
15 BOCs have done it, and from our perspective is out of
16 process and requires additional time and development
17 effort to be able to manipulate and audit those electronic
18 wholesale bills. Or those methods of receiving electronic
19 wholesale billing information.

20 Q Now, in your surreply testimony you talk about that BOS is
21 the national standard. Isn't it correct that there's no
22 standard established by any standards bodies about what
23 format bills for UNE-P or other local competition
24 products, what format those should be sent in?

25 A I know the BOS standard is generally an industry standard.
0165

1 I'm not intimately familiar with the UNE-P aspects of the
2 BOS standard to be able to address that question
3 adequately.

4 Q And EDI is an industry standard as well, isn't it?

5 A EDI is an industry standard for ordering and pre-ordering
6 functions.

7 Q And there's EDI billing standards as well, aren't there?

8 A I'm not familiar with whether there are or not.

9 Q So you're not familiar with whether or not those are
10 industry standards one way or another?

11 A For billing, no, I'm not.

12 Q You refer to the issue of receiving DA charges on your
13 UNE-P bills and stated that the August bills continue to
14 show those charges. Isn't it correct that AT&T received
15 September bills, which were clean of any DA charges?

16 A Are you referring to September of 2002?

17 Q Yes.

18 A I have not seen any bills or spoken with any people that
19 have received bills for September of 2002.

20 Q You state that other CLECs have supported the BOS standard
21 for UNE-P. Isn't it correct that AT&T is the only CLEC
22 that has signed up to receive the BOS bills for UNE-P?

23 A I don't know. I don't think CLECs generally would share
24 their exact plans of what billing format. I do know
25 through the changed management process, we did get -- did

0166
1 have conversation with other CLECs where they expressed
2 interest in it. Whether that interest has or has not
3 developed into a request to have their bills sent via BOS,
4 I don't know.

5 MR. CRAIN: I have no further questions.

6 JUDGE LUIS: Thank you, Mr. Crain. Are there
7 questions from any intervenors, apart from any redirect
8 that AT&T might have? From the staff? Mr. Smith.

9 MR. SMITH: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. SMITH:

12 Q Is it fair to say AT&T has filed comments on the KPMG
13 report with the other FCC applications filed by Qwest?
14 A Yeah.
15 Q And have you personally filed testimony on the UNE-P trial
16 in Minnesota in these applications?
17 A At the FCC?
18 Q Yes.
19 A I don't think AT&T filed any specific comments on the
20 UNE-P tests in Minnesota with the documents we provided in
21 the FCC files.
22 Q So the FCC hasn't seen, for example, to your exhibit in
23 this proceeding 165, the UNE-P performance data in
24 JFF-UNE-P-2?
25 A That's correct. I don't believe they have.

0167

1 MR. SMITH: Thank you.
2 JUDGE LUIS: All right. Thank you.
3 Mr. Witcher, redirect?
4 MR. WITCHER: No questions.
5 JUDGE LUIS: All right. Nothing further then
6 for Mr. Finnegan? All right. Thank you, Mr. Finnegan.
7 Thanks for your patience and cooperation with this
8 proceeding, you may step down.
9 Am I right, then, that the next witness is
10 Mr. McIntyre?
11 MR. CATTANACH: That's correct.
12 JUDGE LUIS: Or do you want to start with
13 somebody else?
14 MR. CATTANACH: That's correct. We have been
15 talking with Ms. Friesen and she is not able to be here
16 until tomorrow morning so we can't start him.
17 JUDGE LUIS: So she's not on the bridge or
18 anything?
19 MR. CATTANACH: I don't think she is. I
20 think she's in the air actually. So if it's still okay,
21 we'll start at 8:00 tomorrow morning.
22 JUDGE LUIS: I can accommodate 8:00 o'clock.
23 Sorry to interrupt you. This matter stands in recess then
24 until tomorrow morning at 8:00 a.m. Off the record.
25 (Proceedings concluded at 3:30 p.m.)

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1 STATE OF MINNESOTA)
) SS
2 COUNTY OF HENNEPIN)

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REPORTER'S CERTIFICATE

I, Gail M. Hinrichs, do hereby certify
that the above and foregoing transcript, consisting of the
preceding 168 pages is a correct transcript of my stenograph
notes, and is a full, true and complete transcript of the
proceedings to the best of my ability.

Dated October 11, 2002.

GAIL M. HINRICHS
Registered Professional Reporter